IN Purſuance of an Order of the Houſe of PEERS, of the 27*th* Day of *May* 1725, I do appoint *Samuel Buckley* to print the Tryal of *Thomas* Earl of *Macclesfield*, and do Forbid any other Perſon to print the ſame.

KING C.

Managers for the Commons —

Sr Clem Wearg
Sr George Oxendon
Sr Thomas Pengelly
Richard West
Jn Hedges.
Walter Cary.
Jn Snell
Sr Jn Rushout.

Tho. Palmer
Ed. Thompson
Walter Plummer
L. Morpeth
Thos Lutwyche.
Arthur Onslow.
Sr Wm Strickland.
George Doddington.
Philip Gybbon

515. l. 9.
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THE

TRYAL

OF

Thomas Earl of *Macclesfield*,

IN THE

HOUSE of PEERS,

FOR

High Crimes and Misdemeanors;

UPON AN

IMPEACHMENT

BY THE

Knights Citizens and Burgesses in Parliament assembled, in the Name of themselves and of all the Commons of *Great-Britain*. Begun the 6th Day of *May* 1725, and from thence continued by several Adjournments until the 27th Day of the same Month.

Published by Order of the House of PEERS.

LONDON:

Printed by *Sam. Buckley* in *Amen-Corner*. 1725.

BY THE

IMPEACHMENT

FROM THE

HOUSE of PEERS

IN THE

TRIAL

OF

QUEEN

THE TRYAL OF THOMAS, EARL of *MACCLESFIELD*,

Begun in the Houſe of LORDS, on *Thurſday*, *May* 6. 1725.

The FIRST Day.

ABOUT Eleven of the Clock, the Lords being ſeated in their Houſe, the Managers for the Houſe of Commons being in the Conveniencies made for them at their Lordſhips Bar, Thomas, *Earl of* Macclesfield, *having a Stool plac'd for him within the Bar, and his Counſel*, viz. *Mr. Serjeant* Probyn, *Doctor* Sayer, *Mr.* Lingard, *Common-Serjeant of the City of* London, *Mr.* Robins, *and Mr.* Strange, *ſtanding near him at the Bar, the Serjeant at Arms made Proclamation as follows:*

Serj. at Arms. Oyez, Our Soveraign Lord the King ſtrictly charges and commands all manner of Perſons to keep Silence, upon Pain of Impriſonment.

Then the *Serjeant at Arms* again made Proclamation as follows:

Serj. at Arms. Oyez, Whereas a Charge of High Crimes and Miſdemeanors has been exhibited by the Houſe of Commons, in the Name of Themſelves, and of all the Commons of *Great Britain*, againſt *Thomas*, Earl of *Macclesfield*; all Perſons concern'd are to take Notice, that he now ſtands upon his Tryal, and they may come forth in order to make good the ſaid Charge.

Then the *Clerk-Aſſiſtant*, by Direction of the *Lord-Chief-Juſtice* King, Speaker of the Houſe of Lords, read the Articles of Impeachment, the Earl of *Macklesfield*'s Anſwer, and the Replication of the Houſe of Commons, as follows:

ARTICLES

Exhibited by the Knights, Citizens, and Burgeſſes in Parliament Aſſembled, in the Name *of Themſelves, and of all the Commons of* Great Britain, *againſt* Thomas, *Earl of* Macclesfield, *in Maintenance of their Impeachment againſt him for High Crimes and Miſdemeanors.*

WHEREAS the Office of Lord Chancellor of *Great Britain* is an Office of the Higheſt Dignity and Truſt, upon the impartial and uncorrupt Execution whereof the Honour of the Crown, and the Welfare of the Subjects of this Kingdom greatly depend: And whereas *Thomas*, Earl of *Macclesfield*, in or about the Month of *May*, in the Year of our Lord, One thouſand ſeven hundred and eighteen, by the great Grace and Favour of His moſt Excellent Majeſty, was conſtituted and appointed Lord Chancellor of *Great Britain*, and did thereupon take the uſual Oath for the due Execution of that High Office, whereby he did ſwear well and truly to ſerve our Soveraign Lord the King, and His People, Poor and Rich, after the Laws and Uſages of this Realm, and ſuch other Oaths as have been accuſtomed; and the ſaid Earl continued in this great Office until about the Month of *January*, in the Year of our Lord, One thouſand ſeven hundred and twenty four, and in Right thereof was intruſted with the Nomination and Admiſſion to the Offices of Maſters of the Court of Chancery, which Maſters of the ſaid Court are Officers of great Truſt ſworn to ſerve the King and his People, and aſſociated to the Lord Chancellor for his Aſſiſtance in the due Adminiſtration and Execution of Juſtice in the ſaid Court: And whereas His Majeſty, upon the ſaid Earl's being appointed to the Office of Lord Chancellor, did, of His Grace and Bounty, beſtow upon the ſaid Earl the Sum of Fourten thouſand Pounds, or ſome other great Sum, and did likewiſe grant unto *George Parker* Eſq; now commonly called Lord *Parker*, Eldeſt Son and Heir Apparent of the ſaid Earl, a Yearly Penſion of Twelve Hundred Pounds, payable out of His Maieſty's Receipt of the Exchequer, during the joint Lives of His Majeſty and the ſaid Lord *Parker*, determinable upon His Majeſty's making a Grant to the ſaid Lord *Parker*, in Poſſeſſion of the Office of one of the Tellers of His Majeſty's Exchequer, for the Term of his Natural Life, which Office being of the Yearly Value of Fifteen hundred Pounds, or upwards, has been ſince granted by His Majeſty unto the ſaid Lord *Parker* for his Life, who in or about the Month of *July*, in the Year of our Lord, One thouſand ſeven hundred and nineteen, was duly admitted to and doth ſtill Enjoy the ſame; and the ſaid Earl, during the Time of his continuing Lord Chancellor of *Great Britain*, did not only enjoy the uſual Salary, Fees, and Profits belonging to his Office, of a very great Annual Value, but alſo did continue to receive an Annual Penſion of Twelve hundred Pounds, which His Majeſty in or about the Month of *June*, in the Year of our Lord One thouſand ſeven hundred and ſixteen, had granted to him and his Aſſigns, during His Majeſty's Life; and did likewiſe receive from the Crown a further Annual Allowance of Four thouſand Pounds, and many other Advantages: Yet the ſaid *Thomas*, Earl of *Macclesfield*, not being ſatisfied with this large and ample Revenue, nor regarding the Obligation of his Oath, or the Duty of his high and important Office, but entertaining wicked and corrupt Deſigns and Views, to raiſe and procure to himſelf exceſſive and exorbitant Gain and Profit, by divers unjuſt and oppreſſive Practices and Methods herein after mentioned, whilſt he continued in the ſaid Office of Lord Chancellor, did Illegally, Corruptly, and Extorſively take and receive to his own Private Uſe the following or ſome other great Sums of Money.

ARTICLE I.

That *Richard Godfrey*, Esq; having Contracted with Sir *Thomas Gery*, One of the Masters of the Court of Chancery, for the Purchase and Surrender of his Office, at the Price of Five thousand Pounds, or some other Great Sum of Money; The said *Thomas*, Earl of *Macclesfield*, whilst he continued Lord Chancellor of *Great Britain*, and before the Admission of the said *Richard Godfrey* into the Office of One of the Masters of the Court of Chancery, did, by Colour of his Office of Lord Chancellor, Illegally, Corruptly, and Extorsively Insist upon, Take and Receive of and from the said *Richard Godfrey* the Sum of Eight hundred and forty Pounds, or some other Sum of Money, for the Admitting him into such Office of a Master of the Court of Chancery, and to the Intent that the said *Richard Godfrey* should Have, Exercise and Enjoy the same, which said Office Touches and Concerns the Administration and Execution of Justice in the said Court, and the said *Thomas*, Earl of *Macclesfield*, being Lord Chancellor, in Pursuance and Execution of the said wicked and corrupt Bargain, or in Pursuance of some other Bargain or Agreement of the same Infamous and Corrupt Nature, did admit and swear the said *Richard Godfrey* into the Office of one of the Masters of the said Court of Chancery, upon the Surrender of the said Sir *Thomas Gery*, in Breach and Violation of his Oath as Lord Chancellor, and of the great Trust in him Reposed, contrary to the Duty of his Office, and against the Good and Wholesome Laws and Statutes of this Realm.

ART. II.

That the Office of One of the Masters of the said Court of Chancery becoming Vacant by the Death of *Samuel Browning*, Esq; One of the late Masters of the said Court; The said *Thomas*, Earl of *Macclesfield*, whilst he continued Lord Chancellor of *Great Britain*, and before the Admission of *James Lightboun*, Esq; into the said Office of One of the Masters of the Court of Chancery, did, by Colour of his Office of Lord Chancellor, Illegally, Corruptly, and Extorsively Insist upon, Take and Receive of and from the said *James Lightboun* the Sum of Six thousand Pounds, or some other great Sum of Money, in Consideration of, and for the Admitting him into such Office, and to the Intent that the said *James Lightboun* should Have, Exercise and Enjoy the same, which said Office Touches and Concerns the Administration and Execution of Justice in the said Court, and the said *Thomas*, Earl of *Macclesfield*, being Lord Chancellor, in Pursuance and Execution of the said wicked and corrupt Bargain, or in Pursuance of some other Bargain or Agreement of the same Infamous and Corrupt Nature, did admit and swear the said *James Lightboun* into the Office of One of the Masters of the said Court of Chancery, in Breach and Violation of his Oath as Lord Chancellor, and of the great Trust in him Reposed, contrary to the Duty of his Office, and against the Good and Wholesome Laws and Statutes of this Realm.

ART. III.

That *John Borret*, Esq; having Contracted with *John Meller*, Esq; One of the Masters of the Court of Chancery, for the Purchase and Surrender of his said Office, at the Price of Nine thousand Pounds, or some other great Sum of Money; The said *Thomas*, Earl of *Macclesfield*, whilst he continued Lord Chancellor of *Great Britain*, and before the Admission of the said *John Borret* into the Office of One of the Masters of the Court of Chancery, did, by Colour of his Office of Lord Chancellor, Illegally, Corruptly, and Extorsively Insist upon, Take and Receive of and from the said *John Borret* the Sum of Fifteen hundred and seventy five Pounds, or some other Sum of Money, for the Admitting him into such Office of a Master of the said Court of Chancery, and to the Intent that the said *John Borret* should Have, Exercise and Enjoy the same, which said Office Touches and Concerns the Administration and Execution of Justice in the said Court; And the said *Thomas*, Earl of *Macclesfield*, being Lord Chancellor, in Pursuance and Execution of the said wicked and corrupt Bargain, or in Pursuance of some other Bargain or Agreement of the same Infamous and Corrupt Nature, did admit and swear the said *John Borret* into the Office of One of the Masters of the said Court of Chancery, upon the Surrender of the said *John Meller*, in Breach and Violation of his Oath as Lord Chancellor, and of the great Trust in him Reposed, contrary to the Duty of his Office, and against the Good and Wholesome Laws and Statutes of this Realm.

ART. IV.

That *Edward Conway*, Esq; having contracted with *John Orlebar*, Esq; one of the late Masters of the Court of Chancery, for the Purchase and Surrender of his said Office, at the Price of Six thousand Pounds, or some other great Sum of Money, the said *Thomas*, Earl of *Macclesfield*, whilst he continued Lord Chancellor of *Great Britain*, and before the Admission of the said *Edward Conway* into the Office of one of the Masters of the Court of Chancery, did, by Colour of his Office of Lord Chancellor, Illegally, Corruptly, and Extorsively Insist upon, Take, and Receive of and from the said *Edward Conway*, the Sum of Fifteen hundred Pounds, or some other Sum of Money, for the Admitting of him into such Office of a Master of the said Court of Chancery, and to the Intent that the said *Edward Conway* should Have, Exercise, and Enjoy the same, which said Office Touches and Concerns the Administration and Execution of Justice in the said Court; and the said *Thomas*, Earl of *Macclesfield*, being Lord Chancellor, in Pursuance and Execution of the said wicked and corrupt Bargain, or in Pursuance of some other Bargain or Agreement of the same infamous and corrupt Nature, did admit and swear the said *Edward Conway* into the Office of one of the Masters of the said Court of Chancery, upon the Surrender of the said *John Orlebar*, in Breach and Violation of his Oath, as Lord Chancellor, and of the great Trust in him reposed, contrary to the Duty of his Office, and against the good and wholsome Laws and Statutes of this Realm.

ART. V.

That *William Kynaston*, Esq; having contracted with *William Rogers*, Esq; one of the Masters of the Court of Chancery, for the Purchase and Surrender of his said Office, at the Price of Six thousand Pounds, or some other great Sum of Money, the said *Thomas*, Earl of *Macclesfield*, whilst he continued Lord Chancellor of *Great Britain*, and before the Admission of the said *William Kynaston* into the Office of one of the Masters of the Court of Chancery, did, by colour of his Office of Lord Chancellor, Illegally, Corruptly, and Extorsively Insist upon, Take, and Receive of and from the said *William Kynaston*, the Sum of Fifteen hundred and seventy five Pounds, or some other Sum of Money, for the Admitting him into such Office of a Master of the said Court of Chancery, and to the Intent that the said *Willam Kynaston* should Have, Exercise, and Enjoy the same, which said Office Touches and Concerns the Administration and Execution of Justice in the said Court; and the said *Thomas*, Earl of *Macclesfield*, being Lord Chancellor, in Pursuance and Execution of the said wicked and corrupt Bargain, or in Pursuance of some other Bargain or Agreement of the same infamous and corrupt Nature, did admit and swear the said *William Kynaston* into the Office of one of the Masters of the said Court of Chancery, upon the Surrender of the said *William Rogers*, in Breach and Violation of his Oath, as Lord Chancellor, and of the great Trust in him reposed, contrary to the Duty of his Office, and against the good and wholsome Laws and Statutes of this Realm.

ART. VI.

That *Thomas Bennet*, Esq; having contracted with *John Hiccocks*, Esq; one of the Masters of the Court of Chancery, for the Purchase and Surrender of his said Office, at the Price of Seven thousand five hundred Pounds,

Pounds, or ſome other great Sum of Money, the ſaid *Thomas* Earl of *Macclesfield*, whilſt he continued Lord Chancellor of *Great Britain*, and before the Admiſſion of the ſaid *Thomas Bennet* into the Office of One of the Maſters of the ſaid Court of Chancery, did, by colour of his Office of Lord Chancellor, Illegally, Corruptly, and Extorſively Inſiſt upon, Take, and Receive of and from the ſaid *Thomas Bennet*, the Sum of Fifteen hundred and ſeventy five Pounds, or ſome other Sum of Money, for the Admitting him into ſuch Office of a Maſter of the ſaid Court of Chancery, and to the Intent that the ſaid *Thomas Bennet* ſhould Have, Exerciſe, and Enjoy the ſame, which ſaid Office Touches and Concerns the Adminiſtration and Execution of Juſtice in the ſaid Court; and the ſaid *Thomas*, Earl of *Macclesfield*, being Lord Chancellor, in Purſuance and Execution of the ſaid wicked and corrupt Bargain, or in Purſuance of ſome other Bargain or Agreement of the ſame infamous and corrupt Nature, did admit and ſwear the ſaid *Thomas Bennet* into the Office of One of the Maſters of the ſaid Court of Chancery, upon the Surrender of the ſaid *John Hiccocks*, in Breach and Violation of his Oath, as Lord Chancellor, and of the great Truſt in him repoſed, contrary to the Duty of his Office, and againſt the good and wholſome Laws and Statutes of this Realm.

ART. VII.

That the Office of one of the Maſters of the ſaid Court of Chancery, becoming vacant by the Death of *William Fellows*, Eſq; One of the late Maſters of the ſaid Court, the ſaid *Thomas*, Earl of *Macclesfield*, whilſt he continued Lord Chancellor of *Great Britain*, and before the Admiſſion of *Francis Elde*, Eſq; into the ſaid Office of One of the Maſters of the Court of Chancery, did, by colour of his Office of Lord Chancellor, Illegally, Corruptly, and Extorſively Inſiſt upon, Take, and Receive of and from the ſaid *Francis Elde*, the Sum of Five thouſand two hundred and fifty Pounds, or ſome other great Sum of Money, in Conſideration of, and for the Admitting him into ſuch Office of a Maſter of the ſaid Court of Chancery, and to the Intent that the ſaid *Francis Elde* ſhould Have, Exerciſe, and Enjoy the ſame, which ſaid Office touches and concerns the Adminiſtration and Execution of Juſtice in the ſaid Court; and the ſaid *Thomas*, Earl of *Macclesfield*, being Lord Chancellor, in Purſuance and Execution of the ſaid wicked and corrupt Bargain, or in Purſuance of ſome other Bargain or Agreement of the ſame infamous and corrupt Nature, did admit and ſwear the ſaid *Francis Elde* into the Office of One of the Maſters of the ſaid Court of Chancery, in Breach and Violation of his Oath, as Lord Chancellor, and of the great Truſt in him repoſed, contrary to the Duty of his Office, and againſt the good and wholſome Laws and Statutes of this Realm.

ART. VIII.

That the Office of One of the Maſters of the ſaid Court of Chancery becoming vacant by the Death of *John Borret*, Eſq; One of the late Maſters of the ſaid Court, who died inſolvent, greatly indebted to the Suitors of the ſaid Court, the ſaid *Thomas*, Earl of *Macclesfield*, whilſt he continued Lord Chancellor of *Great Britain*, without ſecuring a juſt Satisfaction to the ſaid Suitors, for their Debts, and before the Admiſſion of *Mark Thurſton*, Eſq; into the ſaid Office of One of the Maſters of the Court of Chancery, did, by Colour of his Office of Lord Chancellor, Illegally, Corruptly, and Extorſively, Inſiſt upon, Take, and Receive, of and from the ſaid *Mark Thurſton*, the Sum of Five thouſand two hundred and fifty Pounds, or ſome other great Sum of Money, in Conſideration of and for the admitting him into ſuch Office of a Maſter of the ſaid Court of Chancery, and to the Intent that the ſaid *Mark Thurſton*, ſhould Have, Exerciſe and Enjoy the ſame, which ſaid Office Touches and Concerns the Adminiſtration and Execution of Juſtice in the ſaid Court; and the ſaid *Thomas*, Earl of *Macclesfield*, being Lord Chancellor, in Purſuance and Execution of the ſaid wicked and corrupt Bargain, or in purſuance of ſome other Bargain or Agreement of the ſame infamous and corrupt Nature, did admit and ſwear the ſaid *Mark Thurſton* into the Office of One of the Maſters of the ſaid Court of Chancery, in Breach and Violation of his Oath, as Lord Chancellor, and of the great Truſt in him repoſed, contrary to the Duty of his Office, and againſt the good and wholſome Laws and Statutes of this Realm.

ART. IX.

That whereas *Thomas Bennet*, Eſq; in or about the Month of *Auguſt*, in the Tenth Year of His Majeſty's Reign, was poſſeſs'd of an Office in the Court of Chancery, called the Office of Clerk of the Cuſtodies, for the Term of his Life, by Virtue of his Majeſty's Letters Patents under the Great Seal of *Great Britain*, which Office is an Office of Truſt in the ſaid Court, in the Gift and Diſpoſal of the Crown by Grant under the Great Seal, and concerns the writing and making Commiſſions to inquire of Ideots and Lunaticks, and the Proceſs thereupon, and Letters Patents for the Cuſtody of the Bodies of Ideots and Lunaticks, and the keeping, entring, and tranſcribing Orders, Reports, and Accounts made and declared touching Ideots and Lunaticks, and their Eſtates in the ſaid Court of Chancery; and the ſaid *Thomas Bennet* having agreed with *Hugh Hamerſley*, Eſq; to reſign the ſaid Office, in order to obtain His Majeſty's Royal Grant of the ſaid Office to the ſaid *Hugh Hamerſley*, the ſaid *Thomas*, Earl of *Macclesfield*, being then Lord Chancellor of *Great Britain*, did refuſe to permit or accept of ſuch Reſignation, until the ſaid *Thomas Bennet* had agreed to pay unto the ſaid *Thomas*, Earl of *Macclesfield*, or unto his Uſe, One hundred and five Pounds, or ſome other Sum of Money, as a Conſiderat on for the ſame, and, by Colour of his Office of Lord Chancellor, did Illegally, Corruptly, and Extorſively Inſiſt upon, Take, and Receive, of and from the ſaid *Thomas Bennet*, the ſaid One hundred and five Pounds, or ſome other Sum for and in Conſideration of the permitting and accepting ſuch Surrender of the ſaid Office, in order to and for the obtaining and procuring a New Grant of the ſaid Office to the ſaid *Hugh Hamerſley*; and in purſuance thereof, the ſaid *Thomas*, Earl of *Macclesfield*, then being Lord Chancellor, and One of the Lords Juſtices of this Kingdom, during His Majeſty's Abſence, did accept, or cauſe to be duly accepted, the Reſignation of the ſaid *Thomas Bennet* of the ſaid Office, and by his Intereſt and Recommendation did obtain and procure His Majeſty's Royal Warrant for preparing and paſſing His Majeſty's Grant of the ſaid Office, under the Great Seal, to the ſaid *Hugh Hamerſley* for the Term of his Life; which Grant afterwards, in or about the Month of *September*, in the Tenth Year of His Majeſty's Reign, did accordingly paſs the Great Seal, then in the Cuſtody of the ſaid Earl, for which all the uſual and accuſtomed Fees were paid, over and beſides the ſaid One hundred and five Pounds, in great Deceit of the Crown, in Breach and Violation of his Oath as Lord Chancellor, and of the ſeveral great Truſts then in him repoſed, contrary to the Duty of his Office, and againſt the good and wholſome Laws and Statutes of this Realm.

ART. X.

That the ſaid *Thomas*, Earl of *Macclesfield*, whilſt he continued Lord Chancellor of *Great Britain*, did Illegally and Corruptly Ordain, Name, and Make divers other Officers and Miniſters of His Majeſty, for Gift and Brocage, and did likewiſe Illegally and Corruptly ſell divers other Offices, touching and concerning the Adminiſtration and Execution of Juſtice in the Court of Chancery, to ſeveral Perſons, for divers great Sums of Money, which the ſaid Earl did receive from the ſaid Perſons for their reſpective Admiſſions into ſuch Offices, and before they were admitted thereinto, and in order that the ſaid Perſons ſhould Have, Exerciſe, and Enjoy the ſame, in great Breach of the Truſt in him repoſed, and of his Oath as Lord Chancellor, contrary to the Duty of his Office, and againſt the Laws and Statutes of this Realm.

ART. XI.

That the ſaid *Thomas*, Earl of *Macclesfield*, whilſt he continued in the Office of Lord Chancellor of *Great Britain*, in order to advance and increaſe the Illegal and Corrupt Gain, ariſing to himſelf from the Sale and Diſpoſal of the Offices of Maſters of the Court of Chancery, in Violation of the great Truſt repoſed in him for the Care and Protection of the Suitors of the ſaid Court, whoſe Money and Effects were, by Orders of the ſaid Court, lodged in the Hands of the Maſters of the ſaid Court of Chancery, did admit ſeveral Perſons to the ſaid Offices of Maſters of the ſaid Court of Chancery, who, at the Time of ſuch their

Admiſſions, were of ſmall Subſtance and Ability, very unfit to be truſted with the great Sums of Money and other Effects of the Suitors of the ſaid Court, lodged in their Hands by the Orders of the ſaid Court; and did publickly in open Court, when he ſat there as Lord Chancellor, falſly repreſent the ſaid Perſons, ſo by him admitted to the Offices of Maſters of the ſaid Court of Chancery, as Perſons of great Fortunes, and in every reſpect qualified for the Truſt repoſed in them, to the manifeſt Deceit and Injury of the Suitors of the ſaid Court.

ART. XII.

That whilſt the ſaid *Thomas*, Earl of *Macclesfield* executed the ſaid Office of Lord Chancellor, an unjuſt and fraudulent Method was practiſed in the Court of Chancery upon the Sale of the Offices of Maſters of the ſaid Court, and upon the Admiſſions of new Maſters, that the Prices or Sums of Money agreed to be paid for the Purchaſe of the ſaid Offices, and for the Admiſſions thereinto, were ſatisfied and paid out of the Monies and Effects of the Suitors of the Court depoſited in the Hands of the reſpective Maſters, ſurrendring their Offices, or dying, either by way of Retainer of the Purchaſe Money in the Hands of the Maſter reſigning, or of replacing the Money diſburſed for ſuch Purchaſe or Admiſſion by the ſucceeding Maſter, out of the Money and Effects of the Suitors coming into his Hands; by which Practice the Price and Value given upon the Sale of the ſaid Offices, and Admiſſions thereinto, during the Time aforeſaid, were greatly advanced, and ſeveral Perſons of ſmall Ability and Subſtance were encouraged to Contract for the ſaid Offices, upon a Proſpect of the eaſie Method of paying for the Purchaſe of the ſame, by means whereof great Deficiencies have incurred in the Offices of ſeveral Maſters of the ſaid Court, admitted by the ſaid *Thomas*, Earl of *Macclesfield*, which they have not been able to anſwer and make good; and although the ſaid Practice was notorious and publick, and the ſaid Earl was well informed thereof, and fully acquainted therewith, yet the ſaid *Thomas*, Earl of *Macclesfield*, in order to increaſe his own unjuſt and corrupt Profit in the ſelling the ſaid Offices, and the Admiſſions thereto (which in conſequence of this evil Practice was raiſed and received by him out of the Effects of the Suitors, for whom he was intruſted) did not at any Time, whilſt he continued in his Office of Lord Chancellor, uſe or take any Meaſures to reform the ſaid Abuſe, or to prevent the ſame, either by cauſing proper Schedules to be taken of the Money and Effects of the Suitors delivered over and Transferred, or by appointing any Perſon, in his Behalf, to inſpect or ſuperviſe the Transfers or Deliveries thereof, or in any other Manner; But on the Contrary, the ſaid *Thomas*, Earl of *Macclesfield*, Unjuſtly, Corruptly, and contrary to the Duty of his ſaid Office of Lord Chancellor (to whom the Superintendency of the ſaid Maſters, and of their Accounts did Appertain) did ſuffer the ſaid Fraudulent Practice to proceed and be exerciſed without any Controul or Check, whereby great Embezlements have been made of the Suitors Money and Effects, to their great Loſs, in the Offices of ſeveral of the Maſters of the ſaid Court, who have not been able to anſwer and pay their reſpective Ballances owing upon their Accounts, in breach of the Truſt repoſed in him for the Preſervation of the Eſtates and Effects of the Suitors, to the Diſhonour and Diſcredit of the ſaid Court, and to the great Injury and Defrauding of the ſaid Suitors, in a Court of Equity, Eſtabliſhed for their Relief and Protection.

ART. XIII.

That *Fleetwood Dormer*, Eſq; one of the Maſters of the Court of Chancery, having Embezled great Part of the Money and Effects belonging to the Suitors of the ſaid Court, with which he was Intruſted by the ſaid Court, and diſpoſed of the ſame for his own Private Advantage, by Means whereof there became, and ſtill Continues a great Deficiency in that Office, to the Amount of Twenty five thouſand Pounds, or ſome other great Sum; and the ſaid *Fleetwood Dormer*, having Abſconded and for ſome time Abſented himſelf, Application was made to the ſaid Earl of *Macclesfield*, then Lord Chancellor of *Great Britain*, to ſecure the Perſon of the ſaid *Fleetwood Dormer*, and to take proper Methods for Compelling the ſaid *Fleetwood Dormer* to make Satisfaction to the Suitors for the Money and Effects, which he had ſo Embezled, yet the ſaid Earl, from an Apprehenſion, that a Publick Diſcovery of the ſaid Deficiency might leſſen the Unjuſt Gain he propoſed to make to himſelf, by ſelling and diſpoſing of the ſaid Offices of Maſters of the ſaid Court, neglected and declined either to ſecure the Perſon of the ſaid *Fleetwood Dormer*, and his Eſtate and Effects, or to make a proper Enquiry into the ſaid Deficiency: But on the Contrary, the ſaid Earl, whilſt he Continued Lord Chancellor of *Great Britain*, did Endeavour, by many Indirect Practices, to conceal from the Suitors of the Court, the true State and Condition of the ſaid Office, as well with reſpect to the Effects of the ſaid *Fleetwood Dormer*, as to the Debt due from him to the Suitors of the Court; And upon Motion made in the ſaid Court of Chancery (after the ſaid Earl knew that the ſaid *Fleetwood Dormer* had ſo Abſconded) on behalf of ſome of the Suitors of the Court, to have their Effects Transferred from the ſaid *Fleetwood Dormer* to ſome otther Maſter, for the better Securing thereof, the ſaid Earl of *Macclesfield*, in order to delude the Suitors of the ſaid Court into a Belief that their Effects were ſafe, and thereby to prevent a Publick Enquiry, then ſitting as Lord Chancellor in open Court, did ſay, That the ſaid Parties need not be in haſte, and did at the ſame time falſly and deceitfully Declare, that the ſaid *Fleetwood Dormer* was only gone to take the Air in the Country, and that he would return in a little time, and all would be well, or to that Effect.

ART. XIV.

That the ſaid *Fleetwood Dormer*, having towards Satisfaction of the Suitors of the ſaid Court, aſſigned to *Henry Edwards*, Eſq; (who Succeeded him in his Office of Maſter of the ſaid Court of Chancery) a Debt of Twenty four thouſand and forty ſix Pounds Four Shillings, or ſome other great Sum due from *William Wilſon*, a Banker to the ſaid *Fleetwood Dormer*, to the intent that the Money received on Account thereof ſhould be applied and diſpoſed of, as the ſaid Court of Chancery ſhould Order and Direct, the ſaid *Thomas*, Earl of *Macclesfield*, whilſt he continued Lord Chancellor of *Great Britain*, for the Unlawful Purpoſes aforeſaid, without Regard to the Intereſt of the ſaid Suitors, by colour of his Office, did, in an Unwarrantable, Clandeſtine, and Unuſual Manner, Authorize, Direct, and Eſtabliſh a precarious and trifling Compoſition with the ſaid *William Wilſon*, upon the Terms of the ſaid *William Wilſon*'s paying the Sum of Fourteen hundred ſixty three Pounds, two Shillings and a Penny, and aſſigning Ten thouſand Pounds, part of a Debt of Twenty two thouſand and ſixty Pounds, twelve Shillings and five Pence, pretended to be due to the ſaid *William Wilſon* from *Edward Poulter*, or to that Effect, in Diſcharge of the ſaid Debt; and to that End, upon the Report of *John Hiccocks*, Eſq; then one of the Maſters of the ſaid Court, without any Attendance order'd or had thereupon, and without Notice to the ſaid Suitors, did, by a private Order not made in open Court, order the ſaid *Henry Edwards* to accept of the ſaid Compoſition, in full Diſcharge of the ſaid Debt, which ſaid *Edward Poulter* was a Perſon inſolvent, and has ſince abſconded for Debt, and none, or but a very ſmall part of the ſaid Ten thouſand Pounds, has been or is ever likely to be received.

ART. XV.

That the ſaid *Thomas*, Earl of *Macclesfield*, whilſt he continued Lord Chancellor of *Great Britain*, to carry on his Corrupt and Unjuſt Purpoſes, and to conceal the Deficiency that was in the Office of the ſaid *Fleetwood Dormer*, did, in or about the Month of *February*, in the Year of our Lord, One thouſand ſeven hundred and twenty, order the ſeveral Maſters of the ſaid Court of Chancery to bring in their Accounts of the Caſh, Effects, and Securities in their Hands belonging to the Suitors of the Court, not with a Deſign of Examining their Accounts, or Securing the Eſtate and Effects of the Suitors, but with an Intent to Terrify the ſaid Maſters, and thereby oblige them to contribute great Sums of Money towards anſwering the Demands that ſhould, from Time to Time, be made upon the ſaid Office; for which Purpoſe, he the ſaid Earl did at ſeveral Times repreſent, or cauſe to be repreſented to the ſaid Maſters, that if they refuſed ſo to do, the Money and Effects of the Suitors would

be taken out of their Hands, and the ſaid Maſters deprived of making any Profit of the ſame; by which Practices the ſaid Earl, being then Lord Chancellor of *Great Britain*, by colour of his Authority, did perſuade and induce Nine of the Maſters of the ſaid Court of Chancery, to pay Five hundred Pounds each for the Purpoſes aforeſaid, ſeveral of whom paid the ſame out of the Money or Effects of the Suitors in their Hands; but after ſuch Payments, the ſaid *Thomas*, Earl of *Macclesfield* did not oblige the ſaid Maſters to deliver in their Accounts in Purſuance of ſuch his ſaid Order.

ART. XVI.

That *Elizabeth Chitty*, Widow, having obtained an Order of the Court of Chancery, on or about the Seventeenth Day of *March*, in the Tenth Year of His preſent Majeſty's Reign, made by the ſaid *Thomas*, Earl of *Macclesfield*, then Lord Chancellor, whereby *Henry Edwards*, Eſq; One of the Maſters of the ſaid Court of Chancery, who ſucceeded *Fleetwood Dormer*, Eſq; in the ſaid Office, was ordered to pay her the Sum of One thouſand Pounds, Part of the Sum of Ten thouſand Pounds, or other great Sum of Money, formerly paid into the Hands of the ſaid *Fleetwood Dormer*, as a Maſter of the ſaid Court, and by the ſaid Order mentioned to be then in the Hands of the ſaid *Henry Edwards*; and the ſaid *Henry Edwards* complaining to the ſaid Earl, that the making Orders upon him to pay Money which had been received by the ſaid *Fleetwood Dormer*, was a very great Hardſhip upon him the ſaid *Henry Edwards*, in regard he had not any Money or Effects in his Hands to anſwer ſuch Demands, the ſaid Earl of *Macclesfield*, being then Lord Chancellor, in further proſecution of his Unjuſt and Corrupt Purpoſes, did, by Colour of his Authority, endeavour to prevail with the Maſters of the ſaid Court of Chancery, to raiſe the ſaid Sum of One thouſand Pounds out of their Effects, by repreſenting to them, that a Diſcovery of the Deficiency in the ſaid Office might occaſion a Parliamentary or Publick Enquiry into the Nature and Condition of their Offices, and hazard the Forfeiture of the ſame, by reaſon of their having bought the ſaid Offices contrary to Law, which the ſaid Earl then declared would affect him, but themſelves much more, or to that Effect; but the ſaid Maſters refuſing to raiſe the ſaid Sum of One thouſand Pounds, the ſaid Earl of *Macclesfield* did order his Secretary *Peter Cottingham*, Eſq; to pay the ſaid One thouſand Pounds; who, in purſuance of the ſaid Earl's Directions, in or about the Month of *July*, One thouſand ſeven hundred and twenty four, did pay the ſame to *Aſcan Chriſtopher Lochman*, for the Uſe of the ſaid *Elizabeth Chitty*; and the ſaid Earl of *Macclesfield*, upon Application made to him by the ſaid *Aſcan Chriſtopher Lochman*, for Payment of the ſaid Money, did acquaint him, that he, the ſaid Earl, had given Directions to his Secretary for Payment of that Sum, but at the ſame time declared to the ſaid *Aſcan Chriſtopher Lochman*, that he, the ſaid Earl, belived this would be the laſt Payment ſhe was like to receive out of the ſaid Money paid into the Hands of the ſaid *Fleetwood Dormer*, for the Reſidue thereof was in great Danger of being loſt, by reaſon of the Deficiency in the Effects of the ſaid *Fleetwood Dormer*, or to that Effect. Notwithſtanding all which Proceedings, in this and ſeveral other Articles mentioned, upon a Motion made in the Court of Chancery before the ſaid *Thomas*, Earl of *Macclesfield*, then Lord Chancellor, on or about the Fifth Day of *December* laſt, in a Cauſe there depending between *Jane Harper*, Plaintiff, and *Thomas Caſe*, and others, Defendants, relating to the Sum of Two hundred and ſixty Pounds, or ſome other Sum, depoſited in the Hands of the ſaid *Fleetwood Dormer* before his abſconding, and which was then apprehended in great Danger of being loſt, the ſaid *Thomas*, Earl of *Macclesfield*, then ſitting in Court as Lord Chancellor, did Publickly, Falſely, and Deceitfully declare, That he had heard there was a Deficiency in the Office of the ſaid *Fleetwood Dormer*, but that he, the ſaid Earl, knew nothing of it, only as publick News, or to that Effect; and thereupon did order, that the ſaid *Henry Edwards* ſhould examine in what Manner the ſaid Two hundred and ſixty Pounds was depoſited with the ſaid *Fleetwood Dormer*, and whether there was likely to be a Loſs of any Money depoſited with the ſaid *Fleetwood Dormer*.

ART. XVII.

That notwithſtanding the ſaid Earl of *Macclesfield* well knew, that there was a very great Deficiency and Loſs by the Failure of the ſaid *Fleetwood Dormer*, and that the ſaid *Henry Edwards*, his Succeſſor, had not ſufficient in his Hands to pay the whole Money due to the Suitors of the Court, that had been received by the ſaid *Fleetwood Dormer* on their Account; yet the ſaid Earl of *Macclesfield*, being Lord Chancellor, in order to carry on his Unjuſt Deſigns of concealing the ſaid Deficiency, and to prevent any publick Enquiry that might ariſe from the juſt Complaints of the Suitors of the ſaid Court, did, from time to time, in manifeſt and wilful Violation of the Truſt repoſed in him, make Orders on the ſaid *Henry Edwards* for Payment of the Money belonging to ſeveral particular Suitors, which had been lodged in the Hands of the ſaid *Fleetwood Dormer*; In Obedience to which Orders ſeveral Sums were paid, without regard to, or conſideration of the Proportion which the reſt of the Suitors were Entituled to, out of the Effects of the ſaid *Fleetwood Dormer*, whereby many of the ſaid Suitors loſt the Benefit of their proportionable Share, to which in Juſtice they were Entituled.

ART. XVIII.

That the ſaid *Thomas*, Earl of *Macclesfield*, notwithſtanding that he very well knew, and was informed that the Maſters of the ſaid Court did, or that it was in their Power, from Time to Time, and at their Pleaſure to diſpoſe of and employ the Money and Effects belonging to the Suitors of the ſaid Court, which were intruſted with them reſpectively, and more particularly, that the Deficiency appearing in the Office of *Fleetwood Dormer*, Eſq; One of the Maſters of the Court of Chancery, was chiefly occaſioned by his the ſaid *Fleetwood Dormer*'s having taken upon himſelf unduly to Diſpoſe of and Employ the Money and Effects belonging to the Suitors of the ſaid Court, which were Intruſted in his Hands; and notwithſtanding that, ſoon after the ſaid *Fleetwood Dormer* became Inſolvent, it was repreſented and propoſed to the ſaid *Thomas*, Earl of *Macclesfield*, then Lord Chancellor of *Great Britain*, in order to prevent for the Future any Loſſes that might happen to the Suitors of the ſaid Court, that the ſeveral Effects and Securities belonging to the Suitors ſhould be placed out in ſuch Manner, as that the Power of Diſpoſing, Imploying, or in any manner Trading with the ſame, might be totally taken away from the ſaid Maſters, for the Effecting of which juſt Deſign, a particular Method was laid before the ſaid Earl; and it was alſo further propoſed, that the ſaid Maſters ſhould give ſome reaſonable Security to anſwer the Ballance of ſuch Caſh, as ſhould, from Time to time be in their Hands; and notwithſtanding the ſaid Earl was Credibly Informed, that the Sufficiency of ſome other of the ſaid Maſters was very much ſuſpected, yet the ſaid *Thomas*, Earl of *Macclesfield*, whilſt he was Lord Chancellor of *Great Britain*, contrary to the Duty of his Office, and thereby propoſing to make unlawful Gain to himſelf by the Diſpoſal and Sale of the Offices of Maſters of the ſaid Court of Chancery; and in order to Induce Perſons to give him, the ſaid Earl, a greater Price or Reward for their being admitted to the ſame, did not Require or Demand any Security whatſoever, to be given by any of the ſaid Maſters, upon their being admitted to their Offices, or at any other Time; and the ſaid Earl, with the ſame Corrupt View and Intention, and to keep up the Price of the ſaid Offices, totally neglected to Enquire into the Accounts of the ſaid Maſters, and did Fraudulenly, Unjuſtly, and in Breach of the Truſt repoſed in him, Permit and Incourage the Maſters of the ſaid Court, to Employ and Traffick with large Sums of Money belonging to the Suitors of the ſaid Court, and to make Intereſt thereof for their own unjuſt Gain and Profit; and the ſaid Earl, after ſuch Propoſal made to him, as aforeſaid, or at any other Time, during his Continuance in the ſaid Office, did not take any Care that the Effects of the ſaid Suitors ſhould be placed out in ſuch Manner, as to prevent the Maſters from Trafficking therewith, or that the ſaid Maſters ſhould give ſuch Security, as was propoſed; by Means whereof great Deficiencies, to the amount of many Thouſand Pounds, have been, through ſuch Default of the ſaid Earl, occaſioned in the Offices of ſeveral other of the Maſters, to the great Loſs and Injury of the Suitors of the ſaid Court.

ART. XIX.

That whereas his moſt Sacred Majeſty, out of his Fatherly Goodneſs to His People, did, in or about the Month of *November* laſt, direct an Enquiry to be made into the Accounts of the Maſters of the ſaid Court of Chancery, to the Intent that proper Methods might be taken for the Security of the Suitors of the ſaid Court; the ſaid *Thomas*, Earl of *Macclesfield*, being then Lord Chancellor of *Great Britain*,

and One of His Majeſty's moſt Honourable Privy Council, in order to Obſtruct the ſame, and to prevent a Parliamentary Enquiry into the State and Condition of the Offices of the ſaid Maſters, In Breach of the ſeveral great Truſts repoſed in him, did give Advice and Encouragement to the ſaid Maſters to Aſſiſt and Supply each other with Money and Effects, and did repreſent to the ſaid Maſters, that it would be for their Honour and Service, to appear able and ſufficient, and that if they made a Bold Stand now, it might prevent a Parliamentary Enquiry, or to that Effect; and did perſuade ſeveral of them to make falſe Repreſentations of their Circumſtances to His Majeſty, by adding a Subſcription to their reſpective Accounts deliver'd to the ſaid Earl, to be laid before His Majeſty, to the Effect following (*viz.*) That they were able to anſwer the Money and Securities in their Hands, and were willing to pay the ſame to ſuch Perſons as were Entituled thereunto, although the ſaid Earl knew, or had good reaſon to believe, that ſeveral of the Maſters were not then able to anſwer the Ballance of their Accounts, nor are they yet able to ſatisfie or make good the ſame; and when the ſaid Maſters were afterwards required to produce the Caſh and Effects of the Suitors in their Hands, ſome of the ſaid Maſters, according to ſuch Advice and Encouragement given by the ſaid Earl, did Supply others of them with Caſh and Effects, to make a falſe ſhew and appearance of their Ability and Readineſs to anſwer the Ballance of their Accounts.

ART. XX.

That the ſaid *Thomas*, Earl of *Macclesfield*, whilſt he continued in the Office of Lord Chancellor of *Great Britain*, in Breach of the Truſt repoſed in him, and contrary to the Duty of his Office, did, at ſeveral times, borrow and receive of ſome of the Maſters of the ſaid Court, ſeveral great Sums of the Money belonging to the Suitors of the ſaid Court, depoſited in the Hands of ſuch Maſters, and did make uſe thereof for his own private Service and Advantage, ſo long as he had occaſion for the ſame.

ART. XXI.

That the ſaid *Thomas*, Earl of *Macclesfield*, whilſt he continued Lord Chancellor of *Great Britain*, did, in an illegal and arbitrary Manner, extend the Power and Authority of Lord Chancellor, and of the Court of Chancery, beyond their lawful and juſt bounds, and did arbitrarily and illegally aſſume to himſelf, as Lord Chancellor, and by Colour of his Office, an unjuſt and unlimited power of diſpenſing with, ſuſpending and controlling the Statutes of this Realm, made for the Security and Preſervation of the Eſtates and Properties of the Subjects of this Kingdom, to the great Oppreſſion of the Suitors of the ſaid Court, in ſubverſion of the Laws and Statutes of this Realm, in manifeſt Breach and Violation of the Rights and Liberties of his Majeſty's good Subjects, and of his own moſt ſolemn Oath, as Lord Chancellor of *Great Britain*; and more eſpecially, when *Francis Tyſſen*, Eſq; deceaſed, being ſeized, and poſſeſſed of a real Eſtate of the Value of three thouſand Pounds *per Annum*, or ſome other great annual Value, did, by his laſt Will and Teſtament in writing, duly executed, in or about the Month of *October*, one thouſand ſeven hundred and ſeventeen, give and deviſe all his ſaid real Eſtate to the Child his Wife was at that time *enſeint* with (if ſuch Child ſhould be a Son) for his Life, without Impeachment of Waſt, with Remainders to the firſt, and other Sons of the ſaid Infant in Tail Male, and did likewiſe by ſuch Will expreſly nominate and appoint his the ſaid Teſtator's Wife, *Rachel Tyſon*, to be the Guardian of all his Children, during their reſpective Minorities, if ſhe ſhould ſo long continue a Widow; and the ſaid *Francis Tyſſen*, ſoon after died, leaving one Daughter, and the ſaid *Rachel*, his Widow, with Child, after whoſe Deceaſe the ſaid *Rachel* was delivered of ſuch Child, being a Son, afterwards named *Francis John Tyſſen*, in whoſe Right by virtue of the ſaid Will, and of the Statute made in the Twelfth Year of the Reign of King *Charles* the Second, intituled, *An Act for the taking away the Court of Wards and Liveries, and Tenures* in Capite, *and by Knights Service, and purveyance, and for ſettling a Revenue upon His Majeſty in lieu thereof*; the ſaid *Rachel Tyſon* did lawfully take into her Care and Cuſtody her ſaid Infant Son, and the Eſtate ſo deviſed to him, or was willing and endeavoured ſo to do, and to undertake the management of his ſaid Lands and Tenements for his beſt Advantage, and demeaned herſelf therein without any Misbehaviour; yet the ſaid *Thomas*, Earl of *Macclesfield*, being then Lord Chancellor of *Great Britain*, under Colour of his Office and authority, did, by ſeveral Orders made by him, in the Months of *January* and *February*, in the Fifth Year of his Majeſty's Reign, or in one of them, illegally and arbitrarily, and in direct contravention of the Statute made in that Behalf, remove and exclude the ſaid *Rachel Tyſon*, the Guardian of the ſaid Infant, and alſo *John Nicholas* Eſq; (a Perſon of good Subſtance and Ability, nominated by the ſaid *Rachel Tyſon* to be Receiver of the Rents and Profits of the ſaid Infant's Eſtate, and approved by *Robert Holford*, Eſq; one of the Maſters of the ſaid Court, and for that purpoſe, who had given ſufficient Security for the due Execution of his ſaid Truſt) from the Management and Receiverſhip of the ſaid Infant's Eſtate; and did, by ſuch Orders, unduly and injuriouſly nominate and appoint *Robert Doyley*, Eſq; a Creature and Confident of his own, and a Perſon altogether unfit and unqualified for ſo great a Truſt, to be Receiver of the Rents and Profits of the ſaid Infant's Eſtate, and to have a Salary for the ſame with a Power to let ſuch Part of the ſaid Eſtate, as was or ſhould become untenanted, with the Approbation of the ſaid *Robert Holford*, although the ſaid *Rachel Tyſon* did expreſly object unto, and oppoſe ſuch Appointment of the ſaid *Robert Doyley*, and did inſiſt to have the Benefit and Exerciſe of her Right in that Reſpect, as the Guardian appointed and intruſted by her late Husband; and the ſaid *Robert Doyley*, after he was ſo admitted into the ſaid Receiverſhip, did for ſeveral Years receive the Rents and Profits of the ſaid Infant's Eſtate, to the Amount of about Ten Thouſand Pounds, or other great Sum, and in his Life-time did embezzle and convert to his own Uſe great Part thereof; and in or about the Month of *November*, One thouſand ſeven hundred and twenty two, died inſolvent and indebted to the ſaid Infant and his Eſtate in the Sum of Two thouſand ſix hundred Pounds, or other great Sum, upon the Ballance of his Account, no Part whereof has hitherto been ſatisfied or paid; and the ſaid *Thomas*, Earl of *Macclesfield*, in further Abuſe of his Power, and in contempt of the Laws and Statutes of this Realm, when upon Debate of the Matter in the ſaid Court of Chancery, before the ſaid Earl, being then Lord Chancellor, in the Month of *January* or *February*, in the Fifth Year of His Majeſty's Reign, or in one of them, it was inſiſted upon, in Behalf of the ſaid *Rachel Tyſon*, by her Council of great Ability and Experience in the ſaid Court, that ſuch the Proceedings of the ſaid Earl, as Lord Chancellor, were a reviving the Power of the Court of Wards, and were not ſupported or warranted by any Precedent in the Court of Chancery, he, the ſaid *Thomas*, Earl of *Macclesfield*, then ſitting in the Court as Lord Chancellor, did not only perſiſt in ſuch his Appointment of the ſaid *Robert Doyley*, but did alſo arbitrarily, and in Defiance of the ſaid good and beneficial Statute, ſay and declare, in open Court, that then he would make a Precedent in that Inſtance, or he, the ſaid Earl, declared and expreſſed himſelf to that Effect; which Actings, Proceedings, and Declarations of the ſaid Earl, have been and were not only very injurious and prejudicial to the Right and Intereſt of the ſaid *Rachel Tyſon*, as Guardian, and to the great Damage and Loſs of the Infant *Francis John Tyſon*, and a notorious Violation of Property, but were alſo a dangerous Exerciſe of illegal and arbitrary Power, to the Deſtruction of the Laws and Conſtitution of this Realm, in manifeſt Breach of his Oath as Lord Chancellor, and in great Abuſe of his Authority.

And the ſaid Knights, Citizens, and Burgeſſes, by Proteſtation, ſaving to themſelves the Liberty of exhibiting, at any Time hereafter, any further Articles, or other Accuſation or Impeachment againſt the ſaid *Thomas*, Earl of *Macclesfield*, and alſo of replying to his Anſwers which he ſhall make unto the ſaid Articles, or any of them, and of offering Proof to all and every the aforeſaid Articles, and to all and every other Articles, Impeachment, or Accuſation, which ſhall be exhibited by them, as the Caſe ſhall, according to the Courſe of Parliament, require, do pray, that the ſaid *Thomas*, Earl of *Macclesfield*, may be put to anſwer the ſaid Crimes and Miſdemeanors, and that ſuch Proceedings, Examinations, Tryals, and Judgments, may be thereupon had and given, as is agreeable to Law and Juſtice.

The ANSWER *of* Thomas, *Earl of* Macclesfield, *to the* ARTICLES *exhibited by the Knights, Citizens, and Burgeſſes in Parliament aſſembled, in the Name of themſelves, and of all the Commons of* Great Britain, *in Maintenance of their Impeachment againſt him for high Crimes and Miſdemeanors, ſuppoſed to have been by him committed.*

THE ſaid Earl ſaving to himſelf all Advantage of Exception to the ſaid Articles, and of not being prejudiced by any Words or want of Form in this his Anſwer, and alſo ſaving

to himſelf all Benefit and Advantage of the Act for the King's moſt gracious, general, and free Pardon herein after mentioned, and all Rights and priviledges belonging to him as one of the Peers of this Realm, for Anſwer to the ſaid Articles ſaith, That he having for ſeveral Years executed the Office of Chief Juſtice in the Court of King's-Bench, His Majeſty of His Royal Grace and Favour was pleaſed, the Tenth Day of *March*, One Thouſand ſeven hundred and fifteen, to advance the ſaid Earl to the Dignity of a Peer of this Realm, and created him Baron of *Macclesfield*; and, in regard to his Circumſtances at that Time, was further pleaſed, for the better Support of that Honour, to grant to the ſaid Earl the Penſion of Twelve hundred Pounds *per Annum*, in the Articles mentioned, payable at the Receipt of the Exchequer; and His Majeſty was then likewiſe pleaſed to declare His Royal Intentions of giving to the ſaid Earl's only Son, *George Parker*, for his Life, an Office of conſiderable Profit, when a proper Opportunity ſhould offer; That in the Beginning of *May*, in the Year One thouſand ſeven hundred and eighteen, he the ſaid Earl, was, by his Majeſty's great Grace and Favour, appointed Lord Chancellor of *Great Britain*, and was ſworn before His Majeſty in Council the Fourteenth Day of that Month, when the following Oath, being the uſual Oath of Lord Chancellor, was adminiſtred to him, (*viz.*)

YOU ſhall ſwear, that you ſhall well and truly ſerve our Soveraign Lord the King, and his People, in the Office of Chancellor of Great Britain; *and you ſhall do Right to all manner of People, Poor and Rich, after the Laws and Uſages of this Realm; and truly you ſhall Counſel the King, and his Council you ſhall lain and keep; and you ſhall not know nor ſuffer the Hurt or Diſheriting of the King, or that the Rights of the Crown be decreaſed by any Means, as far forth as you may lett, and if you may not lett it, you ſhall make it clearly and expreſsly known to the King, with your true Advice and Counſel; and that you ſhall do and purchaſe the King's Profit in all that you may; All which you ſhall do to the beſt of your Skill and Knowledge,*

As God ſhall help you.

And the ſaid Earl at the ſame Time took the Oaths of Allegiance and Supremacy, but no Oath of Office beſides that above ſet forth; and the ſaid Earl doth admit, That, during his Continuance in the ſaid Office of Lord Chancellor, he did Enjoy the uſual Salary, Fees, and Profits belonging to ſuch Office, which, he ſays, are of much leſs annual Value than they are generally (as he believes) eſteemed to be; And that His Majeſty was pleaſed to grant him the Salary or Allowance of Four thouſand Pounds *per Annum*, in the Articles mentioned, during ſuch Time as he ſhould Continue to be Lord Chancellor; but the ſame is ſo far from being particular in the Caſe of the ſaid Earl (as the ſaid Articles would inſinuate) that it is no other than what hath been for many Years paſt conſtantly granted to, and enjoyed by his Predeceſſors in the ſaid Office; and the ſaid Earl doth likewiſe admit, That His Majeſty did, of His Royal Grace and Bounty, ſign a Warrant for Payment of the Sum of Fourteen thouſand Pounds mentioned in the ſaid Articles, to the ſaid Earl, out of the Receipt of the Exchequer, whereof Two thouſand Pounds was the conſtant uſual Allowance from the Crown to the Lord Chancellor or Lord Keeper, for and towards the Expences in entring upon the ſaid Office; and the Reſidue of the ſaid Fourteen thouſand Pounds, over and above the uſual Fees and Deductions upon Payment thereof, was His Majeſty's Royal Munificence to the ſaid Earl, and the ſame was received by him accordingly; And the ſaid Earl doth likewiſe, with the greateſt Gratitude, own, that about the ſame Time, his ſaid Son being then of a proper Age, and deſirous to go abroad to travel, His Majeſty was pleaſed to grant to the ſaid *George Parker* the Yearly Penſion of Twelve hundred Pounds, payable out of the Receipt of the Exchequer, during the joynt Lives of His Majeſty and the ſaid *George Parker*, determinable upon His Majeſty's granting to him, the ſaid *George Parker*, in Poſſeſſion or Reverſion, the Office of One of the Tellers of the Exchequer, for Life, and his coming into the actual Poſſeſſion thereof and which the ſaid Earl likewiſe admits has been ſince granted to his ſaid Son, and that he came into the actual Poſſeſſion thereof in or about *July*, One thouſand ſeven hundred and nineteen, whereby the ſaid Yearly Penſion is determined; And the ſaid Earl ſaith, That, during his continuance in the ſaid Office of Lord Chancellor, or at any other Time, he never once had a Deſign, or View, or Wiſh to raiſe to himſelf any Exorbitant Gain or Profit, much leſs uſed or ever thought of uſing any Unjuſt or Oppreſſive Methods to Extort or Obtain any Sum whatſoever, as in the ſaid Articles is ſuggeſted, but ſuch Views and Practices are inconſiſtent with the whole Tenor of his Life and Actions; And in caſe it ſhall be thought proper for the ſaid Earl to lay before your Lordſhips an Account of his Eſtate and Fortune, and of the conſiderable Sums of Money he has diſtributed for the Relief and Support of others, it will appear that he is not ſuch a Deſigning, Avaritious, and Oppreſſive Man, as in the ſaid Articles he is repreſented; And the ſaid Earl humbly hopes, that he ſhall be allowed, in this his Anſwer, to diſtinguiſh between Acts themſelves, and the Inferences drawn from them by the ſaid Articles, and that whenever he admits any Fact, he may not be underſtood to admit that ſuch Fact was by him done or committed upon ſuch Motives, and with ſuch Deſigns, or in ſuch Manner, as is ſuggeſted in the ſaid Articles, And with this Reſervation he anſwereth, as followeth: By way of General Anſwer to ſuch of the ſaid Articles, as relate to the making any Preſent by Perſons admitted to the Office of Maſters in Chancery; The ſaid Earl doth ſay, That the ſame has been long uſed and practiſed in the Time of his Predeceſſors, in the ſaid Office, and that ſuch Preſents have been reckoned amongſt the ancient and known Perquiſites of the Great Seal, and the making and accepting thereof has been Notorious to all the World, and never before looked upon to be Criminal or Complained of as ſuch; And the ſaid Earl humbly hopes, that the giving or receiving of a Preſent on ſuch Occaſion is not Criminal in itſelf, or by the Common Law of this Realm, and that there is not any Act of Parliament whatſoever, by which the ſame is made Criminal, or ſubject to any Puniſhment or Judgment, which can be prayed in this Proſecution; And the ſaid Earl thinks himſelf obliged humbly to lay this before your Lordſhips, not only in his own Defence, but in Vindication of the Honour of ſo many Great and Excellent Men, who have been his Predeceſſors in the ſaid Office, and have all along done the ſame, for which the ſaid Earl is now complained of, and of others having been Lords Chief Juſtices of the King's Bench and Common Pleas, Maſters of the Rolls and other Judges, who have likewiſe received Preſents in Money, upon the Admiſſion of the ſeveral and reſpective Officers under them, in ſeveral Courts of Juſtice, and who, the ſaid Earl is aſſured, never apprehended themſelves to be Guilty of any Crime againſt any the good and wholſome Laws or Statutes of this Realm.

To the Firſt, Second, Third, Fourth, Fifth, Sixth, and Seventh Articles, The ſaid Earl further ſaith, That long before the Twenty fourth of *July*, One thouſand ſeven hundred and twenty one, He did Admit and Swear *Richard Godfrey*, *James Lightboun*, *John Borrett*, and *Edward Conway* Eſquires, into the Offices of Maſters of the Court of Chancery, and every One of them did Freely and Voluntarily, and of their Own Accord, as former Maſters had done to the Predeceſſors of the ſaid Earl, ſend to the ſaid Earl a Preſent upon Occaſion of the reſpective Admittances, which the ſaid Earl accepted, and that after the ſaid Twenty fourth of *July*, One thouſand ſeven hundred and twenty one, he did Admit and Swear *William Kynaſton*, *Thomas Bennet*, and *Francis Elde* into the Offices of Maſters of the Court of Chancery, and ſaith, That every of the ſaid Perſons laſt Named did Freely and Voluntarily, and of their Own Accord, in like Manner, ſend a Preſent to the ſaid Earl upon Occaſion of their reſpective Admittances, but ſaith, That it being pretended by the ſaid *Kynaſton* and *Bennet*, that they were by ſuch Preſents diſabled from Anſwering ſo much of the Money due from them to the Suitors of the Court, he the ſaid Earl did afterwards, and before the Impeachment deliver the Preſent ſo ſent him by the ſaid *William Kynaſton*, being Fifteen hundred ſeventy five Pounds; and alſo the Preſent ſo ſent him by the ſaid *Thomas Bennet*, being the like Sum of Fifteen hundred ſeventy five Pounds, into the Court of Chancery, in open Court, to be applied for the Benefit of the Suitors, as the Court ſhould Direct, and that the ſaid Earl retained of the Preſent ſo ſent him by the ſaid *Francis Elde*, no more than the Sum of One Thouſand eight hundred and fifty Pounds.

VIII. To the Eighth Article the ſaid Earl further ſaith, That in *July* laſt the Office of one of the Maſters of the ſaid Court became Vacant by the Death of *John Borrett*, Eſq; who died Inteſtate, but whether Solvent or not, he cannot ſay, but upon Notice of his Death, the ſaid Earl did at Firſt deſire *Richard Godfrey*, Eſq; One of the Maſters of the ſaid Court, who had been very well acquainted with the ſaid Mr. *Borrett*, and his Affairs, and afterwards the ſaid Mr. *Godfrey* and *John Bennet* Eſquire, another of the Maſters of the ſaid Court, to inquire into his Effects, and to take what Care they could about the ſame, who, after ſome Inquiry, informed the ſaid Earl, that they believed there would be no Deficiency, and Secured a

Conſiderable Part of the Effects of the ſaid Mr. *Borrett*, and Entred a Proper Caveat in the Prerogative Court, to prevent Adminiſtration being granted to any Perſons who might Embezzle the ſaid *Borrett*'s Eſtate; and afterwards, at the Requeſt of the ſaid Earl, proceeded ſo far, as to Obtain a Sentence in the ſaid Prerogative Court, for Adminiſtration to be granted, for the Benefit of the Suitors of the Court, to them, the ſaid Mr. *Bennet* and Mr. *Godfrey*, which was afterwards upon their Waving thereof, Granted to Mr. *Paxton*, as the ſaid Earl believes, but the ſaid Earl thought it proper and neceſſary to Admit another Maſter in his Place, to Carry on the Buſineſs of the Court, and to be Intituled to Demand the Effects of the Suitors, from the Repreſentative of the ſaid Mr. *Borrett*, when one ſhould be appointed; and therefore, about the Fifth Day of *Auguſt* laſt, did Admit and Swear *Mark Thurſton*, Eſq; into the ſaid Office, Vacant by the Death of the ſaid *Borrett*, and the ſaid Earl Admits the ſaid *Mark Thurſton* did upon that Occaſion Freely and Voluntarily, and of his own Accord, ſend a Preſent, whereof Two thouſand Pounds and no more were Retained.

IX. In Anſwer to the Ninth Article the ſaid Earl ſaith, That he believes *Thomas Bennet*, Eſq; in this Article named, was Poſſeſſed of the Office of Clerk of the Cuſtodies, in the Article deſcribed, and that ſuch Office is in the Gift and Diſpoſal of the Crown, by Grant under the Great Seal, but denies that he did at any time Inſiſt upon the Sum of One hundred and five Pounds, or any other Sum of Money, to permit or accept of the Reſignation of the ſaid *Thomas Bennet*, or did refuſe to permit or accept thereof, until the ſaid *Thomas Bennet* had agreed to pay the ſame, or any other Sum on that Account; But ſaith, That although the ſaid Office be uſually granted by the Crown, yet it has always been looked upon to be the Right of the Lord Chancellors, or Lord Keepers, to Recommend to that, and other Offices under the Great Seal, and to Approve and Allow of the Deputies to Execute the ſame; and, upon ſuch Recommendations and Approving of Deputies, have accepted Preſents, and looked upon the ſame as their Right; and further ſaith, That there have been Two of ſuch Offices granted in his Time, One of which appearing to him to be a Caſe wherein the Party had ſuffered great Hardſhip, the ſaid Earl paſſed the ſame without any Preſent whatſoever, though the Office be of Conſiderable Value; the other was the Caſe of Mr. *Hamerſley*, in the Articles mentioned, in which the ſaid Earl owns he did Accept a Preſent.

X. In Anſwer to the Tenth Article the ſaid Earl ſaith, The ſame is conceived in ſuch General Terms, that it is not to be expected he ſhould give any particular Anſwer thereto; However, he ſaith, That, during the whole Time of his being Lord Chancellor, he never Once took any Money, Preſent, or Gratuity whatſoever, for or upon Account of the Naming, Making, or Admitting any Officer whatſoever, other than before particularly named, Except in the Curſitor's Office, where he owns he has done, as was done by all his Predeceſſors before him.

XI. In Anſwer to the Eleventh Article the ſaid Earl ſaith, That the ſame not containing any Particular Charge, he apprehends himſelf not obliged to give any Particular Anſwer thereto; but however, in General, does ſay, That he never did Admit any Perſon into the Office of a Maſter of the Court of Chancery, but who was either known to be of Subſtance and Ability, and fit to be Truſted in ſuch Office, or, upon a proper Inquiry, very well recommended to him as ſuch; and, whenever there have been ſeveral Candidates, the ſaid Earl has Conſtantly given the Preference to him that he thought would beſt Diſcharge the Office, and moſt for the Honour of the Court, and the Advantage of the Suitors; and believes that he may, upon ſome Occaſions, have declared, that he thought the then Body of Maſters as Good, with reſpect both to their Eſtates, and Ability for Diſcharge of the Office, and their Integrity, as had been at any time before, or to that Effect, and what he did ſay to that Purpoſe, he thought to be really true.

XII. To the Twelfth Article the ſaid Earl ſaith, That if there was any ſuch Practice as is mentioned in the Article, of paying for the Places of the Maſters out of the Money and Effects belonging to the Suitors of the Court, he was totally ignorant of it; but admits, that he did not, nor did any of his Predeceſſors, that ever he heard or believes, give any particular Directions for Schedules to be made of the Money and Effects of the Suitors of the Court to be delivered over to the ſucceeding Maſters, but believes, that in Virtue of the General Order of Transfer made of courſe upon every Admittance, ſuch Schedules were made between the New Maſters and their Predeceſſors, or the Repreſentatives of their Predeceſſors; and if the ill Conſequences, in the Articles alledged, had followed from ſuch Practice, or the not ordering ſuch Schedule, which he does not Admit, he Inſiſts that the ſame could not render him Criminal.

XIII. In Anſwer to the Thirteenth Article the ſaid Earl ſaith, That after *Chriſtmas*, in the Year One thouſand ſeven hundred and twenty, he was Informed, That the ſaid *Fleetwood Dormer* had withdrawn himſelf to *Holland*, where he then was, and thereupon the ſaid Earl uſed all the propereſt Methods he could for Securing his Effects, and particularly directed Mr. *Hiccocks* and Mr. *Rogers*, the then two Senior Maſters of the Court, to make an Enquiry into his Affairs and Accounts, and to conſider what would be moſt proper to be done; And the ſaid Earl believes, that the ſaid two Maſters, in Purſuance of the Directions from the ſaid Earl, did ſearch the Chambers of the ſaid *Fleetwood Dormer*, in *Lincolns-Inn*, to ſee what Books, Accounts, or Effects could there be met with, but found no Account whatſoever, nor any Effects of Value, and did put a Stop to the transferring of the Stock, then in the Name of the ſaid *Fleetwood Dormer*, in any of the Publick Companies; And the ſaid *Fleetwood Dormer*'s Perſon being thus out of Reach, and his Accounts and Effects wholly unknown, except the Stock, which could not be diſpoſed of without his Concurrence, a Propoſal was ſome time after made to the ſaid Earl, That the ſaid *Fleetwood Dormer* might have a Promiſe of his Liberty from the ſaid Earl, and upon that Condition he would come over, and aſſign all his Effects, and aſſiſt in getting them in, and ſettling and adjuſting his Accounts; And the ſaid Earl, ſeeing no other way open to get any thing for the Suitors, and being made to believe, that if any Deficiency ſhould happen, the ſame would be made up by the other Maſters, did agree, That in caſe the ſaid *Fleetwood Dormer* would come over, and make a full Diſcovery of all his Effects, and aſſign the ſame for the Benefit of the Suitors, he the ſaid Earl would allow him his Liberty on that Condition, and not otherwiſe; and the ſaid Earl was ſoon after Informed, That the ſaid *Fleetwood Dormer* ſubmitted to thoſe Terms, and would very ſoon come over, and diſcover and deliver up his Effects; And the ſaid Earl did not doubt, but the whole Debt upon the ſaid *Fleetwood Dormer* would be paid. And the ſaid Earl ſaith, That he does not remember that any Application was ever made to him, by the ſaid Maſters of the ſaid Court, for any Aſſiſtance of the Court, touching the Perſon or Effects of the ſaid *Fleetwood Dormer*, but what he granted, ſo far as he thought it tended to the Benefit of the Suitors, and believes that no Application was ever made to him by the Suitors, or any of them, or any other, to ſecure the Perſon of the ſaid *Fleetwood Dormer*, or for Compelling him to make Satisfaction to the Suitors; And the ſaid Earl ſaith, That he never endeavoured to Conceal the true State and Condition of the ſaid Office from the Suitors of the Court, nor did any of them apply, till very lately, to the ſaid Earl to look into the ſame; And further ſaith, That he remembers nothing of his ever Uſing any ſuch Expreſſion, as is charged in the ſaid Article, at any Time before or after he knew that the ſaid *Fleetwood Dormer* Abſconded.

XIV. To

XIV. To the Fourteenth Article the Earl ſaith, That *Henry Edwards*, Eſq; in this Article mentioned, ſucceeded to the Office of Mr. *Dormer* about the Eighteenth Day of *May*, One thouſand ſeven hundred and twenty one; but, by Reaſon of the Diſorder the ſaid Office was then under, and the great Danger of a Loſs therein, the Earl had given up and quitted all the Advantage which might Accrue to him upon the Diſpoſal thereof, and left it entirely to the other Maſters to raiſe what Money they could thereby, which was agreed to be all applied towards making Good any Deficiency or Loſs, which might happen to the Suitors of the Court Concerned in that Office; and thereupon the Sum of Five thouſand Pounds was raiſed, by the Diſpoſal of the ſaid Office to Mr. *Edwards*, and was applied accordingly; And the ſaid Earl believes the Debt from *William Wilſon*, in this Article mentioned, was aſſigned by the ſaid Mr. *Dormer* to the ſaid Mr. *Edwards* in Truſt, and to the Intent, that he ſhould Pay, Apply, and Diſpoſe of the ſaid Debt, or ſuch Part thereof, as ſhould, from Time to Time, be by him got in, and received of and from the ſaid *William Wilſon*, in ſuch manner as the Court ſhould Order and Direct, or to that Effect; after which ſaid Aſſignment ſo made, the Earl believes that the ſaid Mr. *Edwards* uſed great Endeavours to obtain Payment and Satisfaction of the ſaid Debt from Mr. *Wilſon*; but finding all his Endeavours fruitleſs, and that the ſaid *Wilſon* had long before ſtopt Payment, and was in no Condition of Paying his Creditors the Whole of their Debts, but that he was willing, and had offered to come to a Compoſition, and to pay them in Proportion the Utmoſt he was able; The ſaid Mr. *Edwards* thereupon, about the Thirtieth Day of *June*, in the Year of our Lord, One thouſand ſeven hundred and twenty two, preferred his Petition to the ſaid Earl, as Lord Chancellor, ſetting forth in Subſtance the State of the Caſe, as before mentioned, and Praying that it might be referred to one of the Maſters of the Court, to ſee if ſuch Compoſition, ſo propoſed by the ſaid *William Wilſon*, were for the Benefit of the Perſons Intituled to receive the ſame; and the ſame was accordingly, by Order of the ſaid Earl, referred to Mr. *Hiccocks*, the then Senior Maſter of the Court, to Enquire into, and make his Report therein; And about the Six and twentieth Day of *July*, then next following, the ſaid Mr. *Hiccocks* made his Report, that the ſaid *William Wilſon* had, under his Hand in Writing, propoſed to Aſſign over to the ſaid Mr. *Edwards*, as a Compoſition for, and in full Diſcharge of, the Sum of Twenty four thouſand forty ſix Pounds and four Shillings, therein mentioned to be due and owing from him to the ſaid Mr. *Edwards*, as Aſſignee of the ſaid Mr. *Dormer*, the Sum of Ten thouſand Pounds, Part of a large Sum due to the ſaid *William Wilſon*, from *Edward Poulter* of *Hackney*, Gentleman, in this Article mentioned, and to pay the ſaid Mr. *Edwards* in Specie, the Sum of One thouſand four hundred ſixty three Pounds, two Shillings and one Penny, over and above the Sum of Five hundred and ſixty Pounds, then already paid to the ſaid Mr. *Dormer*, in Part of the ſaid Compoſition; and that upon Conſideration had of the Circumſtances of the ſaid *William Wilſon*, and the ſaid ſeveral Matters, he was of Opinion, that the accepting the ſaid Compoſition would be for the Benefit of the Perſon or Perſons Intitled to receive the ſame; Upon which ſaid Report the ſaid Mr. *Edwards*, about the Third of *Auguſt* then next, preferred another Petition to the ſaid Earl, with the ſaid Report annexed, and thereby expreſly Prayed the ſaid Earl to Order him, the ſaid Mr. *Edwards*, to accept of the ſaid Compoſition, whereupon the ſaid Earl, in a proper and uſual Manner, Ordered the ſame as Prayed; And the ſaid Earl ſaith, that he was informed, and believes, that the ſaid Compoſition was Made and Agreed to, upon a Conſultation of all or moſt of the Maſters of the ſaid Court, who the ſaid Earl did believe would Uſe their beſt Endeavours to get as much as they could; And the ſaid Earl ſaith, he hath heard, and believes it to be true, that beſides the One thouſand four hundred ſixty three Pounds, Two Shillings and One Peny, then paid down, there hath been ſince got in by Mr. *Edwards*, on Account of the ſaid Debt from *Edward Poulter*, the Sum of One thouſand Pounds, or thereabouts; and that at the time of the ſaid Aſſignment, the ſaid Debt, claimed by *Wilſon* from *Poulter*, was a juſt Debt, and Judgment at Law has been ſince obtained for Eighteen thouſand Pounds, Part thereof, and the ſaid *Poulter* was looked upon to be a Subſtantial Perſon, though, to avoid Payment of the ſaid *Wilſon*'s Debt, which aroſe on account of their Dealings in *South Sea* Stock, and Subſcriptions in the Year, One thouſand ſeven hundred and twenty, the ſaid *Poulter* not only brought his Bill in Chancery, but, after the ſame was diſmiſſed, and that he was taken in Execution at *Wilſon*'s Suit at Common Law, he found Means to make his Eſcape out of the Cuſtody of the Marſhal of the Court of King's Bench, and to get over to *France* or *Holland*, where he ſtill Continues, as the Earl is informed; but he is likewiſe Informed, that, after the ſaid Eſcape, a Commiſſion of Bankruptcy was taken out againſt him by the ſaid *Wilſon*, upon which ſome Effects were recovered, and likewiſe an Action at Law brought, and a Verdict and Judgment for Eighteen thouſand Pounds and upwards obtained by the ſaid *William Wilſon* againſt the Marſhal, on Account of the ſaid Eſcape; and ſaith, he hath likewiſe been Informed, That the ſaid *Edward Poulter* and the Marſhal have each of them offered Conſiderable Sums of Money by way of Compoſition for the ſaid Debt; but the ſaid *Wilſon*, from a Perſuaſion of the Abilities of the ſaid *Edward Poulter* to pay the Whole, did at firſt refuſe any Compoſition with the ſaid *Poulter*, and ſince hath been afraid to make any Compoſition, either with *Poulter* or the Marſhal; and what may be the Conſequence thereof, with regard to the Suitors of the Court, or what further Sums of Money may be recovered upon Account of the ſaid Debt, towards making them Satisfaction, the Earl ſaith, he cannot with any Certainty take upon him to Anſwer.

XV. To the Fifteenth Article the Earl ſaith, That about the Month of *February*, in the Year of our Lord, One thouſand ſeven hundred and twenty, he gave Orders to his Secretary to write to the ſeveral Maſters of the Court of Chancery, to bring in their Accounts of the Caſh, Effects, and Securities in their Hands, belonging to the Suitors of the Court, and believes he did ſo, but denies that the ſame was done with any unjuſt Purpoſe, or with any Thought to terrifie the ſaid Maſters to make any Contribution, towards Satisfying the Demands upon the ſaid Office of *Fleetwood Dormer*, but believes, what they did contribute, they paid Freely and Voluntarily, and out of their own Money, and therein, as the ſaid Earl believes, did no more than follow a Precedent of the like Nature, on the Failure of Dr. *Edisbury*, formerly a Maſter of the ſaid Court; And the ſaid Earl ſaith, That his real and whole Intention in Calling for the ſaid Accounts, was to Inform himſelf, in the beſt Manner he was able, of the State and Condition of the ſeveral Offices, and thereby to be the better able to make proper Regulations concerning the ſame; and therefore, though the ſaid Article ſeems to Inſinuate, as if the Calling for the ſaid Accounts was dropped, as ſoon as the Maſters were prevailed on to Contribute, the ſaid Earl ſaith, That afterwards, and without any Regard thereto, he ſtill Continued to Call for the ſaid Maſters Accounts, and not finding them brought in, as he expected, he did, about the Beginning of *November* following, cauſe another Letter to be ſent to them, requiring them to bring in their Accounts; and, by both the Letters ſent to them on that Occaſion, he directed the particular Method in which he would have their Accounts made up; but the ſaid Earl, being afterwards convinced how Difficult and Tedious a Work it would be, and what Obſtruction it would give to the Buſineſs of the Court, and that at laſt it could not be depended upon with any Certainty, was forced to lay aſide that Deſign, and to content himſelf with going on in the ſame Road which his Predeceſſors had done; and humbly begs

leave to Obſerve, That what has been lately done, with reſpect to the Accounts of the ſaid Maſters, plainly ſhews the Inſuperable Difficulties of ſuch an Undertaking.

XVI. To the Sixteenth Article the Earl ſaith, That he believes that, on or about the Seventeenth of *March*, One thouſand ſeven hundred and twenty three, ſuch Order was made, as in the ſaid Article is mentioned, for *Henry Edwards*, Eſq; to pay *Elizabeth Chitty* one thouſand Pounds, Part of the Money brought before Mr. *Dormer*, but does not remember that the ſaid *Henry Edwards* made any Complaint thereof to the ſaid Earl, but believes Mr. *Edwards*, not having then ſufficient Effects of Mr. *Dormer*'s in his Hands, refuſed Payment thereof; and that in *July* following, Mr. *Lochman*, in the Articles named, applied himſelf to the ſaid Earl ſeveral times, and in a very earneſt Manner, to help the ſaid Mrs. *Chitty* to the ſaid One thouſand Pounds, alledging that he the ſaid Mr. *Lochman* was to marry her, and that he had made a Compoſition with his Creditors, upon which One thouſand Pounds was to be paid in a very ſhort Time, which he then mentioned; and that he the ſaid Mr. *Lochman* was to have the ſaid One thouſand Pounds for that Purpoſe; and that, if he had it not by the Time, the Compoſition would be Void, and he ſhould be utterly Ruin'd; And at length the ſaid Earl, being greatly moved by the preſſing Importunities of the ſaid Mr. *Lochman*, and by Compaſſion for the very great Diſtreſs in which he then appeared to be, did promiſe to ſupply him with the ſaid One thouſand Pounds out of his own Pocket, and accordingly directed Mr. *Cottingham*, then his Secretary, to pay it, taking from the ſaid Mrs. *Chitty* an Aſſignment of the Benefit of the ſaid Order, and believes the ſame was done accordingly; and that, upon Mr. *Lochman*'s Preſſing for a further Sum for the ſaid Mrs. *Chitty*, for her own Uſe, the ſaid Earl might tell him, that the ſaid One thouſand Pounds was all that he muſt Expect from the ſaid Earl; and the ſaid Earl does not believe that he had any Diſcourſe with the ſaid Maſters to perſuade them to pay the ſaid One thouſand Pounds to Mr. *Lochman*.

And as to the laſt Branch of the ſaid Article the ſaid Earl ſaith, That the Fact was, that one *Jackman*, having, in the Cauſe in the Article mentioned been Confirmed the beſt Purchaſor of part of the Eſtate of *T. Harper* at the Price of Two hundred and ſixty Pounds, ſo long ago as the Nineteenth of *December*, one thouſand ſeven hundred and ſeventeen, and it being at the ſame time Ordered, That the Writings belonging to ſuch Eſtate, ſhould be delivered to his Councel, and that the Tenants ſhould Attorn to him, on his bringing his Purchaſe Money before Mr. *Dormer*, then one of the Maſters, and the ſaid Money having been brought before the ſaid Maſter the Twenty fourth Day of *December*, One thouſand ſeven hundred and ſeventeen, and the Tenants, having Attorned to *Jackman*, but the Conveyances not being then executed, though long before approved, a Motion was made in the Court of Chancery before the ſaid Earl on the Fifth Day of *December* laſt, that all Parties might Execute the Conveyances, and the Two hundred and ſixty Pounds be paid to the Plaintiff, towards Satisfaction of a Demand ſhe had out of the Eſtate of the ſaid *Harper*; and thoſe that were to have the *Reſiduum* of the ſaid *T. Harper*'s Eſtate, inſiſted, that they were always ready to joyn in the Conveyances, if the Purchaſe Money were applied to Diſcharge the reſt of the Eſtate, that they were Apprehenſive of a Deficiency of Mr. *Dormer*'s Eſtate, and therefore neither they nor the Plaintiff ought to be Sufferers by ſuch Deficiency, the Delay having been occaſioned by the Purchaſer, and not by the Plaintiff, and therefore ſcrupled Executing the Deeds, unleſs upon Payment of the Money to the Plaintiff, and diſcharging the reſt of the Eſtate therefrom; and this being the firſt Time that any Queſtion relating to Mr. *Dormer*'s Deficiency had been laid before the Court, by any of the Suitors, the ſaid Earl took Notice of its being ſo, and believes he might Expreſs himſelf to this Effect, That he had indeed heard of the ſaid *Dormer*'s Deficiency, but that it had never yet come Judicially before him, upon Complaint of any of the Suitors of the Court; and further Declared, That if there ſhould be any Deficiency in his Office, ſeveral Circumſtances had concurred thereto, as *Wilſon* the Banker's ſtopping Payment, greatly Indebted to him, *Poulter*'s going away in *Wilſon*'s Debt Eighteen thouſand Pounds, and upwards, after a Verdict and Judgment at Law, and *Poulter* in Actual Execution for it; and that, as he had heard, *Wilſon* had then lately brought an Action of Eſcape againſt the Marſhal, and recovered a Verdict againſt him for the like Sum; and how all theſe Matters would at laſt come out, the ſaid Earl ſaid he did not know, or he expreſſed himſelf to that Effect, and no other; and thereupon Ordered, that it ſhould be referred to Mr. *Edwards*, to examine whether the ſaid Two hundred and ſixty Pounds was Depoſited with Mr. *Dormer* for the Benefit of any particular Perſon, and whom, and what was the Occaſion of the Delay, that the ſaid Conveyances were not Executed, and the ſaid Two hundred and ſixty Pounds, Purchaſe Money, paid out before the Year one thouſand ſeven hundred and twenty; and whether there was likely to be a Loſs of any Money Depoſited with the ſaid Mr. *Dormer*, and that upon the Maſters Report ſuch further Order ſhould be made, as ſhould be juſt; and the ſaid Earl hopes the ſaid Order was very proper and neceſſary, and takes the Liberty of Repreſenting to your Lordſhips, That this was after the Accounts of the Maſters had been laid by the ſaid Earl before the Lords of the Council, and had been for ſome Time under the Conſideration of the Judges and others, appointed by His Majeſty to inſpect the ſame.

XVII. To the Seventeenth Article the Earl ſaith, That he never Endeavour'd to conceal the Deficiency Occaſioned by Mr. *Dormer*'s Failure, but as the ſaid Earl was under a full Perſuaſion, that the ſame would all in due Time be made Good, and as Mr. *Dormer*'s Effects were coming in by Degrees, and no Application was made to him by any of the Perſons concerned, to put a Stop to, or any Reſtraint upon, the Payments, he did not think it Incumbent upon him, *Ex Officio*, to make a Declaration of an Average. And the ſaid Earl ſaith, That he does not know that any Order was made by him for Mr. *Edwards* to pay any Money that had been lodged with Mr. *Dormer*, except the Order aforementioned, in the Caſe of *Chitty*, but believes ſeveral Orders have been made by the Court for that Purpoſe, and that the ſaid Mr. *Edwards*, under a firm Perſuaſion that the whole Deficiency would be made Good, paid out the whole Sums ſo Ordered, ſo far as the Money then in his Hands would extend.

XVIII. To the Eighteenth Article the ſaid Earl ſaith, He never knew how the Maſters kept or diſpoſed of the Money and Effects belonging to the Suitors of the Court; and as he believes, that after Dr. *Edisbury*'s Failure, the then Lord Chancellor, ſo he knows that after Mr. *Dormer*'s misfortune, the Earl thought of ſeveral methods to prevent any Inconvenience upon the like Accident for the Future; but they had both the ſame misfortune, not to bring any of them to ſuch Perfection, as to venture to put them in Practice.

That Several Propoſals were made to him by the Perſons he conſulted upon that Occaſion, but none that he believes, it will be held Criminal not to have then Eſtabliſhed; ſome Things were propoſed that he thought Impracticable, ſome Inſufficient, ſome Inconſiſtent with that compleat Regulation he hoped to make, the Objects he propoſed to himſelf, were to Provide for whatever Deficiency might happen in the Office late of Mr. *Dormer*, to Secure the Suitors from any future Loſs, and to make ſeveral Regulations relating to the Offices of the Maſters, and he thought theſe would be beſt done together, nor had he perfected the Scheme of any One of them to his own Satisfaction; he Remembers no Propoſal, that he thought would take it totally out of the Power of the Maſters, to diſpoſe of the Securities or Effects, or effectually Secure the Caſh. The ſaid Earl Admits, that he did not demand any Security to be given by any of the ſaid Maſters at the time of their Admittance, becauſe it had not been done by his Predeceſſors, who were much wiſer Men than himſelf, nor was he ſo much as asked by any of the Parties Intereſted ſo to do; as to what the ſaid Earl did with Relation to the Accounts of the ſaid Maſters, he hath already ſet forth, and ſaith, That he gave no Permiſſion nor Encouragement to the Maſters of the Court, to Employ or Traffick with the Suitors Money for their own Gain or Profit; he owns, that with reſpect to the Securities in the Hands of the Maſters, he made no General Order, and thinks it the leſs material, becauſe, notwithſtanding what is alledged in the Cloſe of this Article, he believes all the preſent Maſters did, in *December* laſt, Produce all the Securities in their Hands, and the Court of Chancery hath ſince Secured the ſame for the Benefit of the Suitors.

XIX. To the Nineteenth Article the ſaid Earl ſaith, That upon great Conſideration of Mr. *Dormer*'s Deficiency, and of

the Danger there might be of further Inconveniences, with Relation to the Money and Effects in the Hands of the Maſters, and of ſeveral Diſputes and Differences that had ariſen in the Court of Chancery, and of ſome Applications of the ſaid Maſters, for Eſtabliſhing them in their juſt Rights, and of ſome Practices of the Maſters, which the ſaid Earl thought ought to be Reformed; he was Convinced, that the ſame was a work of too great Conſequence for him Singly to Attempt, and being highly Senſible of His moſt Sacred Majeſty's Paternal Goodneſs to His People, did preſume humbly to Beſeech His Majeſty, as the fountain of Juſtice, to Depute ſome of His moſt Honourable Privy Council, to take the matters aforeſaid into Conſideration, in Order to the Eſtabliſhing ſuch Regulations, as might tend to the Honour of that High Court, and to the Advantage of His Majeſty's Subjects being Suitors there; which Requeſt, His Majeſty out of His Wonted Goodneſs, was pleaſed to receive very Graciouſly, and Named ſeveral Lords, and other Honourable Perſons of His Privy Council, to be a Committee, to take the ſame into Conſideration; and purſuant to His Majeſty's Command, the ſaid Committee met, and began with the Accounts of the ſaid Maſters, wherein the ſaid Earl begs leave to Appeal to ſuch of your Lordſhips, who Attended in that Committee, whether he did not Contribute to the Utmoſt of his Power, to have every thing done which the ſaid Committee thought Expedient: And the ſaid Earl ſaith, that he made all ſuch Orders as were by them Judged requiſite, and ſo preſſed the Execution thereof, that not only the Accounts of all the Maſters then in being were brought in, but all the Securities in all their Hands, and the Caſh of moſt of them were Actually Lodged in the Bank of *England*, and therefore the ſaid Earl is greatly Surprized, to find himſelf Charged with Obſtructing the taking thoſe Accounts, which he had thus deſired might be taken, and contributed to the taking of them with all his Power. And the ſaid Earl ſaith, That he never thought of preventing a Parliamentary Enquiry, any otherwiſe, than by making it unneceſſary, and procuring to the Suitors a full redreſs of all their Grievances, and rectifying whatever he found Amiſs, and that he looked upon to be his Duty, and begs leave to ſay it here Once for all, in Anſwer to all the ſeveral Inſinuations of that kind contained in the Articles,

And the ſaid Earl further ſaith, That while the ſaid Accounts were taking, every one of the ſaid Maſters declared over and over, that they had Effects ſufficient to Anſwer their whole Accounts, and the ſaid Earl Firmly believed the ſame to be true, and as all of them, that he ſaw (which he believes were all, or at leaſts all but Mr. *Kynaſton*) had told the ſaid Earl, that they were able to Anſwer their Accounts; and when they brought their Accounts to the ſaid Earl, for him to lay before the ſaid Committee, Mr. *Holford* had wrote under his Account ſome Declaration to that Effect, and ſome others of them, as he remembers, had made uſe of ſome other Expreſſions, which he thought not ſo proper; and ſome, as he believes, had wrote nothing (but he cannot Diſtinguiſh the Perſons) and the ſaid Earl thinking that when the ſaid Accounts came to be laid before the Committee of Counſel by him, it would be proper that the ſame thing ſhould be Declared to the Committee, which had been ſaid to him ſingly, he Adviſed them all to Write the ſame Words under their Accounts, and did tell them, in great Sincerity and Friendſhip, that at a Time when ſo many Men's Mouths were open againſt them as Inſolvent, it would be for their Honour and Intereſt to make it appear, that they were Able and Sufficient, as he then believed them to be, but never thought of a Contrivance to have them Deceitfully appear or ſeem what they really were not; and he ſays they did then withdraw to make the Subſcription, or at leaſt ſo many of them whoſe Accounts were then ready, and ſoon after deliver'd them to the ſaid Earl, who carried them with him to the Committee of Council, whither he was then going, without looking upon them; but upon reading them at the Council, it was obſerved that they had not all uſed the ſame Words, having Varied conſiderably, but what any of the Subſcriptions were, he cannot take upon him to ſet forth.

And the ſaid Earl further ſaith, That a ſubſequent Order being made by the ſaid Earl, for the ſaid Maſters to produce their Securities, and their Caſh, before the Perſons appointed to Inſpect their Accounts, they made great Complaint, that ſo many hundred thouſand Pounds ſhould be required at ſo ſhort a Warning, and ſome of them ſaying, that though they had Effects ſufficient, and could raiſe the Whole, if they had a little Time, deſired the ſaid Earl to allow them further Time for that Purpoſe; but the ſaid Earl ſaith, That he required them to beſtir themſelves, and raiſe it immediately, telling them, that ſince they had Effects to give Security, they might find Friends to furniſh the Money; and believes he did ſay, that ſome of their own Brethren might perhaps be able to let them have Money till they could raiſe it another Way.

But if any of them did ſupply others with Caſh or Effects to produce, only to make a falſe Shew and Appearance of their Ability and Readineſs to Anſwer the Ballance of their Accounts, the ſaid Earl knows nothing of it, and is ſure they had not the leaſt Encouragement from him ſo to do.

XX. To the Twentieth Article the ſaid Earl ſaith, That it never entred into his Thoughts, to make uſe of, nor did he ever make uſe of any of the Money belonging to the Suitors of the Court, for his own private Advantage, but believes, that in *December*, One thouſand ſeven hundred and twenty, having Occaſion for the Sum of One thouſand five hundred Pounds, and Asking his Secretary, Mr. *Cottingham*, whether he could lend him the ſame, he ſaid he could not, but would procure it for him, and accordingly Borrowed the ſame from Mr. *Godfrey*, one of the Maſters of the ſaid Court, and the ſaid Earl gave his own Note for Payment thereof to the ſaid Mr. *Godfrey*, and in *February* following Repaid One thouſand Pounds, Part of the ſaid Principal Sum; but in the ſame month of *February*, One thouſand ſeven hundred and twenty upon a freſh Occaſion, borrowed again Part of the ſaid One thouſand Pounds ſo paid back, and a Note or Notes were given for the Payment thereof; and ſome Time after the ſaid Earl Ordered the whole Money borrowed of the ſaid Mr. *Godfrey* to be paid, with all the Intereſt due for the ſame; and the ſaid *Godfrey* received the Principal, but would not be prevailed upon to take the Intereſt, or any Part thereof: And the ſaid Earl ſaith, That all the ſaid Money was repaid within the Compaſs of a Year, after it was borrowed; and the ſaid Earl declares, That he never received or borrowed any Sums of Money whatſoever of any of the Maſters of the ſaid Court, except as above ſet forth.

XXI. To the One and twentieth Article the ſaid Earl ſaith, That upon the ſtricteſt Review of his own Behaviour, during the Time he had the Honour of Serving His moſt Sacred Majeſty in the Office of Lord Chancellor, he is not Conſcious to himſelf that he ever did, in any Illegal or Arbitrary manner, Extend his Power, or the Power of the Court, beyond their Lawful and Juſt Bounds, or that he did Arbitrarily or Illegally aſſume to himſelf, as Lord Chancellor, or by Colour of his Office, any unjuſt and unlimitted Power of Diſpenſing with, Suſpending, or Controlling the Laws or Statutes of this Realm, or that he any ways Oppreſſed the Suitors of the Court, or was guilty of any Breach or Violation of the Rights or Liberties of the Subject, or of his own Oath, as Lord Chancellor: And with regard to the particular Complaint againſt him in this Article, the ſaid Earl ſaith, That *Rachel Tyſon*, in the Article named, as the Earl is informed, cauſed a Bill to be Exhibited in the Court of Chancery, in the Name of her Son and Daughter, in the ſaid Article likewiſe mentioned, by their *Prochein Amy*, againſt herſelf, and the ſaid *John Tyſon* and others, to have the Truſts in the Will of her late Husband duly performed; and the ſame was brought to Hearing at the Rolls the Seventh Day of *July*, One thouſand ſeven hundred and eighteen, and by the Decree then made, It was amongſt other Things Ordered, upon the Prayer (as the ſaid Earl hath heard and believes) of the Councel employ'd by the ſaid *Rachel Tyſon*, that a Receiver ſhould be appointed of the Rents and Profits of the Real Eſtate, who was to have a Salary allowed him, and Power to Let and Set the ſaid Eſtate, as there ſhould be Occaſion, with the Approbation of the Maſter, to whom the Cauſe was referred: And the ſaid Earl ſaith, That an Execution of that Part of the Decree, which directed a Receiver to be appointed, the Maſter having certified that he had appointed *John Nicholas*, Eſq; to be the Receiver of the Rents and Profits of the ſaid Eſtate, the ſaid *John Tyſon*, thinking himſelf Aggrieved thereby, did, in the uſual Courſe of Proceedings in the ſaid Court, cauſe Exceptions to be Filed againſt the ſame, and upon the Arguing thereof before the ſaid Earl,

by Councel of both Sides, Affidavits were read, to ſhew that the ſaid *John Nicholas* was an Improper Perſon; that the ſaid Teſtator had declared in his Life Time, that the ſaid *John Nicholas* by Name ſhould not have any thing to do with the Management of his Eſtate; and that a conſiderable Part thereof conſiſted in old Houſes and Water-works: And the ſaid Earl, upon a Full Hearing of both Parties, was of Opinion, that the ſaid *John Nicholas* ought not to be appointed the Receiver; and upon the Propoſal of the ſaid *John Tyſon*, then in Court, Order'd *Robert Doyley*, Eſq; to be Receiver, he giving Security to be approved of by the ſaid Maſter; which Order was made, as he believes, on the Fifteenth of *January*, in the Year One thouſand ſeven hundred and eighteen; and affirmed upon the Re-arguing the ſaid exceptions on the Sixth of *March*, in the Year One thouſand ſeven hundred and eighteen; ſince which Time the Parties Intereſted have never thought fit to complain thereof to your Lordſhip's by Appeal, in order to have it Reverſed, as miſtaken or Unjuſt, though now the making thereof is complained of as a crime; and the ſaid Earl is not Aſhamed to Own, that he was very well Acquainted with the ſaid *Robert Doyley* for ſome Years before the ſaid Order, and believed him to be a Perſon of great Honour and Integrity, Application and Exactneſs, and believes there are ſeveral Perſons of Diſtinction, to whom he had the Honour to be known, who had the ſame Opinion of him; but the ſaid Earl did not appoint him Receiver becauſe of his own Reſpect for him, but becauſe he was named by the ſaid *John Tyſon*, who was Uncle of the ſaid Infant, and Executor of his Father's Will in Truſt for him, and by the ſame Will appointed his Guardian in caſe of his Mother's Death or Marriage, and to whom the ſaid Teſtator had Deviſed the ſaid Eſtate, in caſe of the Death of the ſaid Infant without Iſſue Male, and whoſe Intereſt it therefore was to take Care of the Infant's Intereſt in that particular; and the ſaid *John Tyſon* and Sir *Cæſar Child* (whoſe Daughter the ſaid *John Tyſon* had Married) had ſuch Confidence in him the ſaid *Robert Doyley*, that upon the Eighteenth Day of *March*, One thouſand ſeven hundred and eighteen, they entred into a Rocognizance, together with him, in the Penalty of ſeven thouſand Pounds, for the ſaid *Robert Doyley*'s duly accounting for and paying the Money he ſhould receive out of the ſaid Infant's Eſtate; And the ſaid Earl ſaith, That no Complaint was ever made to the ſaid Earl againſt the ſaid *Robert Doyley* to the time of his Death, but he owns that he hath heard, that upon the Maſter's Stating the Accounts ſince *Chriſtmas* laſt, there does appear due from the ſaid *Robert Doyley* about Two thouſand and five hundred Pounds, or Two thouſand ſix hundred Pounds, but believes there is not any fear or doubt but that the ſame is very well ſecured by the ſaid Recognizance.

And the ſaid Earl ſaith, That he does not remember the particular Expreſſions uſed by the Council or himſelf, upon Aruging or Re-arguing the ſaid Exceptions, but he cannot believe that any Council of great Ability and Experience in the ſaid Court, would have thought what the ſaid Earl did Extraordinary, much leſs would have uſed ſuch an Expreſſion to the ſaid Earl as in the Articles, which is an Indecent Cenſure of his Proceedings; and here being a Decree in this Caſe, approved of by all Parties, that a Receiver ſhould be appointed to receive the Rents and Profits of the Infant's Eſtate, the ſaid Earl is at a loſs to underſtand, how the fixing on the Perſon to be the Receiver, upon good Security, to account for and pay the ſame for the Infant's Uſe, is Reviving the Court of Wards, whoſe Buſineſs it was to take the Rents and Profits of the Infant's Eſtate for the King's Uſe, without Accounting for any of them to the Infant, but barely providing a Maintenance for him, at the Diſcretion, perhaps, of ſome Grantee of the Cuſtody.

Thus the ſaid Earl has laid his Caſe before your Lordſhips, and doth further, for Anſwer to all the ſaid Articles, ſay, That he is not Guilty of all or any of the Matters contained in the ſaid Articles, or any of them, in Manner and Form as they are therein Charged againſt him; And the ſaid Earl doth further Inſiſt upon the Benefit of His Majeſty's moſt Gracious and General Free Pardon, granted to all His Subjects (not therein Excepted) in and by an Act of Parliament for that Purpoſe made in the Seventh Year of His Majeſty's Reign, in Bar of, and in his Defence againſt the ſaid Impeachment, and the ſaid Articles exhibited in maintenance thereof, and all and every the Proceedings thereupon, ſo far as the ſame extend to any Neglect, Offence, or Miſdemeanor, or Suppoſed Neglect, Offence, or Miſdemeanor, or any other Act, Matter, or Thing, Suffered, Done, or Committed, or Omitted, by him the ſaid Earl, before the Four and twentieth Day of *July*, in the Year One thouſand ſeven hundred and twenty one, and doth humbly Inſiſt, That no Evidence ought to be given againſt him for or concerning any of the Matters or Things aforeſaid, in and by the ſaid Act Pardoned, or any of them; and doth Aver, That he is not within any of the Exceptions in the ſaid Act contained.

MACCLESFIELD.

The COMMONS REPLICATION *to the Anſwer of* Thomas, *Earl of* Macclesfield.

THE Commons have conſidered the Anſwer of *Thomas*, Earl of *Macclesfield*, to the Articles Exhibited againſt him by the Knights, Citizens, and Burgeſſes in Parliament Aſſembled, and Obſerve, that the ſaid Earl hath Induſtriouſly Avoided giving a direct and particular Anſwer to ſeveral Matters poſitively and certainly Alledged againſt him in the ſaid Articles, which, from the Nature of the Facts themſelves, muſt neceſſarily Lie in his own Knowledge, and hath Attempted to Diſguiſe and cover the real Crimes laid to his Charge, by Immaterial and Evaſive Inſinuations of Facts of a different Nature; and that many Parts of the ſaid Anſwer are Contradictory to, and Inconſiſtent with each other, upon which they might Demand your Lordſhips Immediate Judgment: Yet the Commons being able to Maintain the Truth and Juſtice of their Accuſation, are willing to Enter into the due Examination thereof: and do Aver their Charge of High Crimes and Miſdemeanors againſt the ſaid *Thomas*, Earl of *Macclesfield* to be true, and that the ſaid Earl is Guilty, in ſuch Manner as he ſtands Impeached; and that the Commons will be ready to prove their Charge againſt him, at ſuch convenient time as ſhall be Appointed for that Purpoſe.

Lord

Lord C. J. King. Gentlemen of the Houſe of Commons, you may proceed as you pleaſe.

Sir G. Oxenden. My Lords, the Commons of *Great Britain* in Parliament aſſembled have, out of their indiſpenſible Duty to His Sacred Majeſty, and Zeal for the Security of the Eſtates and Properties of their Fellow-Subjects, exhibited a Charge of High Crimes and Miſdemeanors againſt the Earl of *Macclesfield*, late Lord Chancellor of *Great Britain*, complaining of many dangerous and corrupt Practices, many grievous and heinous Offences committed againſt the good and wholeſome Laws and Statutes of this Realm.

The firſt and principal Accuſation of the Commons is, That the Earl at the Bar, whilſt he continued in the Office of Chancellor, did illegally and corruptly inſiſt upon, and take of divers Perſons, ſeveral great and exorbitant Sums of Money, in Order to, and before their Admiſſion into their Offices of Maſters in Chancery; and that thoſe Offices concern the Adminiſtration of Juſtice in that Court.

This, my Lords, is a Charge of the deepeſt Dye; The Crime alledged ſtrikes at the very Root of Government itſelf; it is the Eſſence and Stability of Society, that Juſtice ſhould be adminiſter'd with Clearneſs and Impartiality, that the People may ſit eaſy under the Wings and Protection of the Laws, and their Properties be guarded from unjuſt Invaſions. In the Progreſs of the Charge your Lordſhips will obſerve, That almoſt all the other Crimes and Miſdemeanors, of which this noble Perſon ſtands accuſed, are ſubſervient to this chief Deſign of amaſſing together vaſt and immenſe Sums of Money, and that they have a Tendency to advance the Price of theſe Offices: Whether they be acts of unjuſt Oppreſſion; of wilful Neglect; or of partial and unequal Adminiſtration of Juſtice: Whether they be Acts of open Violation of Duty, or of ſecret and private Intrigue to elude the publick Juſtice of the Kingdom: Your Lordſhips will find theſe Arrows drawn all from the ſame Quiver, dipt in the ſame deadly Poiſon, and directed to the ſame Mark.

In order to ſet this in the cleareſt Light, I muſt go on and obſerve, That the Commons charge in the next Place, That inſufficient Perſons were found out and pitched upon, to be admitted Maſters of the Court, Men of ſmall Subſtance and Ability; no ways fit to be entruſted with the great Sums of Money and Effects lodged in their reſpective Hands.

My Lords, The natural Qualities and Endowments requiſite to recommend Men to ſo great a Truſt ought to have been Honeſty and Probity; The acquir'd ones, thoſe of Knowledge and Experience; without a due Mixture of theſe it was very hazardous to admit any into Truſt: But no doubt Credit and Competency of Fortune were Ingredients perfectly neceſſary; becauſe whatever Loſs, or Misfortune, might attend the Management of a Maſter ſo accompliſhed, in the ordering the Suitors Money, here might be ſome Proviſion coming out of his Eſtate to make Reparation. Your Lordſhips will, no queſtion, at the firſt View, think it carries an odd Appearance, when this unfortunate Earl had reſolved within himſelf, at all Hazards, to raiſe exorbitant and immenſe Treaſures out of the Sale and Diſpoſal of the Maſters Places, how it ſhould anſwer his corrupt Deſigns to admit into them Perſons of ſmall Subſtance, and ſome of almoſt deſperate Fortunes, utterly unable to lay down the vaſt Prices thoſe Offices were ſold for at Publick Auction: But, my Lords, the Vaſtneſs of the Price was no Objection, or Diſcouragement, to a Perſon already undone, provided he might be made eaſy in the Manner of Payment, and run no Hazards. Men of Subſtance might very well be afraid to *Preſent*, as his Lordſhip's Phraſe is, a whole Eſtate at once for an uncertain and precarious Proſpect, either of Succeſs in the Office, or of Life, or Health, to enjoy it; ſo that the fitteſt Engines and Inſtruments to effect the noble Lord's Purpoſes, were Men of ſmall and ſhattered Circumſtances. And therefore the Commons go on and charge, That there was a fraudulent and unwarrantable Method made uſe of in paying for the Maſters Offices out of the very Money belonging to the innocent Suitors of the Court.—That this Practice was notorious and publick, and the Perſon at the Bar well acquainted therewith. Your Lordſhips now obſerve, That the greateſt Difficulty of all to an indigent Perſon, *viz.* the Payment of the Money, was, by this dangerous and unjuſtifiable Contrivance, totally removed, and when a Man was neither to be out of Pocket himſelf, nor thrown into any Fears and Apprehenſions of being queſtioned for miſapplying the Suitors Money, is it at all to be wondered at, that the Price of theſe Offices ſhould ſwell to that Bigneſs, as long to be the Topick of Converſation in the World about us, and at laſt become the Subject of a National Enquiry? This ſcandalous Method of Payment is of the moſt malignant Kind, and a Suitor is, contrary to the Law of Nature, made the Inſtrument of his own Deſtruction; his Subſtance which ought to be his Support and Relief, is turned to his Oppreſſion, or if Part only be taken from him, it is in order to arm another to diſpoſſeſs him of the Reſt. The great Perſon, whoſe Duty it is to protect his Property, is the Promoter of his Loſs, and is the more unpardonable in it, as he turns that Loſs to his own Advantage. If it be a Thing univerſally condemn d, for a Perſon in the Earl's late high Station, to borrow a Suitor's Money without his Knowledge, notwithſtanding he offers a moderate Intereſt for it, becauſe it is encouraging the Maſters, by his own Example, to lend out Sums with as much Juſtice to other People, How infinitely greater is this Offence? If it be a Crime to put Mens Properties to hazard, how much blacker is it to take them to one's ſelf, and incorporate the Widow's Mite with one's own Heap! But, My Lords, when ſuch prodigious Sums were extorted from the Maſters, could it be any Myſtery how they were to re-imburſe themſelves? For although they paid no Money of their own, yet they made themſelves accountable for what they uſed of the Suitors; was it not an obvious Conſideration, That if they dared pay for their Employments with part of the Truſt-Money they meant to traffick and game with the Remainder too? They came in Maſters upon ſuch Terms, for no other Purpoſe but to pillage and fleece thoſe under their Care. What muſt be the natural and unavoidable Conſequence of lodging in their Hands ſuch uncontrollable and licentious Power over their Caſh, but that the firſt ill Run would cruſh them at once, and pave the Way to great Deficiencies! But leſt the Proſpect of ſo calamitous a Caſe ſhould deter the moſt greedy from contracting for a Maſter's Place on Terms the moſt inviting, you will ſee, in the Series of this Affair, what Shifts, what Artifices were employed, to hide ſuch a miſerable Scene from the Eyes of the World. For the Commons in the next Place charge, That *Fleetwood Dormer*, Eſq; having embezzelled great Part of the Effects belonging to the Suitors of the Court, died indebted to them in divers Sums of Money, amounting in the whole to 25000*l* and upwards; that the noble Lord at the Bar has not made any proper Inquiry into *Dormer*'s Deficiency, taken no Care about his Effects, but has endeavoured to hide and conceal, from the Suitors, the State and Condition of the Office, and that this Concealment was, leſt a publick Diſcovery of the Deficiency might

leſſen the unjuſt Gains he propoſed to himſelf from the Sale of the Maſters Places. Your Lordſhips obſerve here, That one Accuſation is, a great and manifeſt Neglect in the Execution and Diſcharge of his Duty; a wilful and deliberate Neglect; not ariſing from the Infirmity of human Nature, but growing out of the Corruption of it; mitigated by no one Shadow of Excuſe, but aggravated by the Attendance of many foreſeen ill Conſequences. If an Office abuſed in the moſt fatal Manner, on the Brink and Precipice of utter Deſtruction, was not a proper Object of his immediate Inſpection, no wonder the more proſperous Offices did not deſerve his Care; what Maſter, who was an Eye-Witneſs of this, would be under that decent and neceſſary Awe of the preſiding Perſon, and keep himſelf within the juſt Bounds and Limits of his Office? This, my Lords, is indeed a wilful Neglect: But if you look on it in another Light, in Order to conceal the Deficiency, that the Value of the Maſters Places might not be run down, it will appear, in its worſt Colours, an Artifice to ſupport and carry on a Fraud, a Contempt of Duty for the ſake of Corruption. The Series of the Accuſation will evidently ſhew, that the Earl's Heart was ſet upon this Concealment; for we ſhall now find him beginning to diſplay his utmoſt Ingenuity; here was an Accident, which, unleſs great Care were taken, would entirely fruſtrate and blow up his Deſigns; were *Dormer*'s Deficiency divulged abroad, and the whole Body of the Suitors (who had ſure a Right, even from Compaſſion, to be taken care of) made acquainted with the ruinous Condition of his Office, who would anſwer that the Government itſelf might not have been alarmed, and a publick Inſpection made four Years ago into the other Maſters Accounts too? The Dread of a publick Examination now overbalanced all other Conſiderations; and as ſome of the Suitors (whoſe Intelligence and Sagacicity were better than the reſt) were daily preſſing and ſolliciting for their Due, the Office-Money embezzelled, no care taken to ſecure *Dormer*'s Effects, all Supplies and Demands on *Wilſon* cut off by the wretched and unwarrantable Compoſition made for the Suitors without their Conſent or Knowledge: Theſe Diſtreſſes and Difficulties preſſing and ſurrounding this unfortunate Earl, it was neceſſary ſome Meaſures ſhould be immediately concerted to prop and ſupport this tottering Office; and therefore, my Lords, you will now find him arming himſelf with the Weapons of Authority and uncontrollable Power, and playing the Tyrant under the ſpecious Pretence and Colour of Duty. For the Commons go on and charge, That the Perſon at the Bar, during the Time he was Lord Chancellor, made an Order for the Maſters to bring in their reſpective Accounts of the Caſh and Securities in their Hands; (a very proper Inſpection, no doubt, had it been well-deſigned) but your Lordſhips will obſerve the Charge is, That this was done to terrify and induce the Maſters to contribute Money towards *Dormer*'s Deficiency; to conceal the true State of the Deficiency from the Knowledge of the World: and they further alledge, That in purſuance of this intimidating Order, Money was contributed for that Purpoſe, Part of which we ſhall prove to be paid ſince the Act of Grace, on the 11th of *Auguſt*, 1721. and that thoſe Accounts were not inſiſted upon after that. My Lords, This Propoſal met with its deſerved Oppoſition from the Maſters; however, the Apprehenſion of loſing the Caſh and Effects prevailed at laſt, the Point was carried, and a Sum accordingly contributed. When your Lordſhips have but juſt now ſeen that there was a very viſible, and deſigned Neglect in forbearing to inquire into *Dormer*'s Effects, and to go to the Bottom of his Deficiency; is it to be imagined, that this calling for the State of their Accounts cou'd be done out of Vigilance and Duty? No Man can think ſo; were they ever inſiſted upon after the Contribution? His Lordſhip knows they never were; if the real Deſign was to ſearch and examine them, it was as proper a Time to do it after the 11th of *Auguſt* as before; no body believes they were in a better Condition, the Maſters had the ſame free Power of their Caſh, and the Perſon at the Bar had as deep a Senſe of his Duty after that Day ſure, as before. If the Misbehaviour of *Dormer* gave occaſion to this deſigned Inſpection into the general Condition of the other Offices, how came it about the Deſign was never carried into Practice, till His Majeſty, out of Compaſſion and Paternal Goodneſs to his oppreſſed People gave Directions for that End? The Deficiency of *Dormer* continues ſtill, and yet the Earl impeached has made no Regulations in the Offices, examined no Accounts during the Time he remained in that high Poſt; nor ſet up any Lights, or Land-Marks, whereby the preſent deficient Maſters might have cleared the Rocks on which they have ſplit. No, my Lords, this was only a Pretence of Regulating; a Diſſimulation of Duty, for the better Concealment of *Dormer*'s Frauds. Beſides, the Propoſal that the Maſters ſhould contribute to the patching up a Deficiency in another's Office, is unjuſt in itſelf, and fatal in its Conſequence. Can any thing be more repugnant to Juſtice than to oblige one Perſon to repair the Loſſes of another, incurred without his Knowledge or Fault? Or where is the Advantage to the Offices in general, allowing it to be juſt? if *Dormer*'s Deficiency be ſupplied out of other Offices, will not thoſe Offices miſs thoſe Supplies? and be as much impoveriſhed in the general, as *Dormer*'s is mended in particular? Surely, my Lords, there needs no Reaſoning about this, the Thing ſpeaks itſelf. The Commons take notice of an Alternative in this Article offered to the Maſters, either to conſent to a Contribution, or to be immediately ſtripp'd of the Caſh and Effects; ſo that upon paying down the Sum demanded, a Maſter was confirmed afreſh in the ill Conduct of his Affairs, he pays his Fine, and renews his Leaſe of Knavery and Impunity; his Books may be kept as cloſe from Inſpection as the Books of the Sybils, they contain alike the Deſtiny of Mankind, and he may go on with Authority to prey upon the Properties of the Fatherleſs and Widow; and no doubt the Maſter argues upon as good Grounds as the noble Earl; and concludes, that if for the Advantage of his unjuſt Schemes, the impeached Lord thinks it highly reaſonable to extort Money from him belonging to the Suitors, which is never to be reſtored, it may, with Parity of Juſtice, be as decent for him to take the ſame Liberty with their Caſh too, for the Service of his own. But the Commons deteſt the corrupt Practices of both, and expect exemplary Juſtice on the Great Offender at the Bar.

Thus far I have touched in a general Manner on the Management and Artifices uſed in the Concealment of *Dormer*'s Deficiency, and, no doubt, it muſt create an univerſal Aſtoniſhment in your Lordſhips, how it could ever enter into the inmoſt Receſſes of his Thoughts, that ſo great a Calamity as this could poſſibly be for ever hid in Darkneſs; that ſo torn and ghaſtly a Wound could ever heal of itſelf; or rather, that it ſhould not by long Neglect become quite incurable.

Your Lordſhips will obſerve in the enſuing Charge, That Mrs. *Elizabeth Chitty*, an unfortunate Widow, having obtain'd an Order from the Earl at the Bar, by Virtue of which Mr. *Edwards*, *Dormer*'s Succeſſor, was to pay her 1000 *l.* part of a much larger Sum depoſited in the Hands of Mr. *Dormer*, and *Edwards* refuſing to pay the ſame, not having ſufficient in his Hands, out of *Dormer*'s Effects, to anſwer the ſaid Demand. The impeach'd Lord did again make uſe of the ſame Artifices

fices and Stratagems to compel the ſeveral Maſters to contribute this further Sum of 1000 *l.* to ſtop the Complaints, and ſtifle the Murmurings of Mrs. *Chitty*; and did alſo intimidate them, by repreſenting, That if the Deficiency were known, a Parliamentary Enquiry would probably enſue, and the Maſters be deprived of their Offices, having bought them contrary to Law: This not taking Effect, the Commons Charge, That in order to accompliſh his wicked and corrupt Purpoſes, he did himſelf pay the 1000 *l.* into *Lochman*'s Hands, for the Uſe of Mrs. *Chitty*, ſaying, this was the laſt Money ſhe was ever likely to receive, by reaſon of a Deficiency in *Dormer*'s Office. My Lords, You ſee here is a ſecond Attempt, a freſh Endeavour to conceal the Deficiency by the Aid and Aſſiſtance of the ſame Meaſures made uſe of before, but backed by the Terrors of a National Inſpection. The Continuation of theſe Arts is no ſmall Preſumption, that the End deſigned was unjuſt in the Earl's own Judgment. His Condemnation, in this Inſtance, ariſes and ſprings out of his own Arguments and Conduct. If a publick Diſcovery of this Deficiency would lay the Foundation of a publick and national Examination; What ſafer, what more expedient Meaſures could be concerted and taken, than immediately to ſatisfy Mrs. *Chitty*'s Demands; by the Refuſal of which, this publick Diſcovery, ſo much, and ſo juſtly apprehended, might come out? And what ſtronger Inducement could he lay before the Maſters, why the Burden of this Payment ſhould fall upon them, than by ſhewing in how fatal a Manner that national Examination would affect themſelves? He repreſents to them their having purchaſed their Offices (and many of them of himſelf too) in direct defiance of the Law, and that it was their near Concern to avoid the Pit, in which they were likely to be ſwallowed up. My Lords, I take this to be a plain Confeſſion of his Crime: Our Accuſation is, That the Sale of theſe Offices is repugnant to Law and Juſtice; Here is his own manifeſt Acknowledgment that it is ſo, but aggravated and heightened by this flagitious Circumſtance, That whilſt he is reminding the Maſters of that Guilt which he himſelf ſhared, he draws an Argument from that very Guilt, why they ſhould aſſiſt him in a freſh Offence; and ſince they had already offended againſt the Laws of the Land, if they would avoid Puniſhment, the beſt way of doing it, was by a new Tranſgreſſion. You have his own Word for it, that he knowingly exceeded the ſtatutable Limits preſcribed by the Wiſdom of our Anceſtors, for the Safeguard and Protection of the Rights and Properties of the *Britiſh* Nation. If the Buyer is Criminal, how can the Seller be Innocent? And yet his Lordſhip, it ſeems, knows of no Statute now in being, on which Judgment can be prayed in this Proſecution. 'Tis this wilful and deliberate Tranſgreſſion of the Laws that has opened that Fountain of Iniquity which has drowned and laid waſte the Fortunes of our Fellow Subjects.

In ſtating the Charge thus far, it is Evident, That neither a wilful Neglect of Duty has been wanting, nor a thorough Contempt of Juſtice; no Pains ſpared, no Artifices unemploy'd to plunge the Deficiency in *Dormer*'s Offices in the deepeſt Obſcurity: You have found him forcing and wreſting a Contribution from the Maſters; not ſuch a one, my Lords, as would equally anſwer all Demands on the Office, but as a bare Sufficiency to ſatisfy the Importunities of Perſons for the preſent, and thereby lull others into a deſtructive and fatal Security; To make a falſe ſhew and appearance of Ability in this Office, which the Maſters were afterwards directed to do in theirs. Your Lordſhips ſhall ſoon find him acting another Part, and diſheartning *Lochman* from ingaging any further in the Marriage with Mrs. *Chitty* (for the Sollicitations of a weak Woman to have her juſt Due might be eaſier dealt with) aſſuring him, that the Deficiency was ſuch as muſt infallibly root out all future Hopes and Expectations on her Account; and yet the cloſe of this Article ſets forth, That ſo lately as the fifth of *December* laſt, this Earl ſitting then in open Court, did, in a Cauſe depending before him, proteſt and affirm, That, for his Part, he knew nothing of *Dormer*'s Deficiency, but as publick News. My Lords, If Truth and Sincerity are not to be found in the Seat of Judgment, where muſt we look for them? Where ſhall we place our Confidence, if there is no Dependence on the Affirmation of a Judge? Where ſhall we ſeek Examples worthy our Imitation, if the uprighteſt Places afford them not? But to paſs over this unpleaſing Scene, your Lordſhips will be pleaſed to take Notice, That the unfortunate Perſon at your Bar, in Hopes ſtill to cover the Deficiency, made divers Orders on Mr. *Edwards* for the diſcharging and paying the intire and full Dues to ſome of the Suitors, whilſt others were put off with an inconſiderable Share. Is there any Thing more Noble in the Mind of Man, than a Deſire of diſtributing equal Juſtice? Without Equality Juſtice is deſtroy'd and ſacrificed to the Paſſions and Infirmities of Men; and yet your Lordſhips will find there is no Virtue ſo lovely, no Principle ſo amiable, but muſt be abandoned and proſtituted to the carrying on this wretched Scheme. Such is ever the miſerable Fate of thoſe who dip their Hands in Corruption; they ingage originally in one Vice only, but are forced to adopt and cheriſh a number of others to keep that one a Secret from the World. For it becomes, at laſt, *neceſſary* to do injuſtice for the ſake of Security; Peoples Neceſſities, tho' they may be alike, yet are their Paſſions quite different, and a neceſſitous and ſtarving Suitor of a broken and worn-out Spirit might be turned away from his Lordſhip's Preſence with a tenth Part of his Right, whilſt one of a more obſtinate Make, and a bolder Conſtitution, would inſiſt upon, and wrangle for the whole. This Difference of Tempers might facilitate, poſſibly, ſuch unjuſt Dealings for a Time; but could this partial Preference of one Perſon to another, in manifeſt Contempt and Violation of the Rules of Equality, be any otherwiſe of Service to this Noble Lord, or make any amends for diminiſhing Reputation, but by ſtopping the Mouths and Cries of the ſolliciting Suitors with ſuch Proportions as would go down with them, prevent the Contagion from breaking out, and diſappoint the Application of a publick Remedy? You ſee plainly the miſerable Conſequences the Sale of the Maſters Places has been attended with; the fraudulent Method of Payment; the unjuſt and uncontrolled Abuſes of the Maſters; the great Neglect of *Dormer*'s Deficiencies; the unjuſtifiable Concealment of it; the ſtretches of Art and Injuſtice in the Manner of doing it; 'tis one continued Series and Succeſſion of Maleadminiſtration, calculated for the advancing the Profit and Gain of the Perſon at your Bar. Your Lordſhips would, no doubt, wonder elſe, why ſo great a Truſt as upwards of a Million of Money, ſhould be repoſed in the Maſters, without ſome reaſonable Security on their Part, or ſome proper Reſtraint laid upon them for their due and fair Diſcharge of it, eſpecially, ſince *Dormer* had broke, and brought upon the Sufferers ſo fatal a Misfortune! And this it is, my Lords, that raiſes the Reſentment and Amazement of the Commons, who farther Charge, That, notwithſtanding the Earl well knew that *Dormer*'s Deficiency was chiefly occaſion'd by the Liberty he aſſumed to himſelf of Trafficking and Gaming with the Suitors Effects, and that the other Maſters did, or had it in their Power ſo to diſpoſe of, or other-

wiſe miſemploy the Money and Securities in their Hands; and, notwithſtanding a reaſonable and proper Scheme was laid before him, whereby the like Misfortune might be prevented for the future, yet the Earl never required any Security, or laid any Reſtraints on the Maſters, but left them to the wide and boundleſs Liberty of abuſing their Truſt as Avarice and Ambition ſuggeſted Occaſions. I will not enter into the Conſideration how far it may have been the Practice not to require Security, I take it for granted, if none has been formerly demanded, it was becauſe the Preſiding Perſons were vigilantly executing the Duty of their Offices, and by frequent Inſpections into the Maſters Accounts, reſtraining them from the Exerciſe of unwarrantable Power. But were that otherwiſe, bad Precedents, my Lords, will not juſtify Omiſſions; no, nor extenuate them, tho' I believe not any Inſtance can be produced, not ſo much as the Appearance of any, where it was ſo indiſpenſibly and abſolutely Neceſſary as in this Caſe; there was no need or uſe of any Example to remind him of it, common Prudence teaches us the Neceſſity of providing againſt Diſorders or Loſſes for the Time to come, which our paſt Negligence has once brought upon ourſelves or others; 'tis the only Attonement a Man can make for his former Faults; and if the Perſon at the Bar had had at Heart the leaſt Intention of repairing the Breaches made in the Juſtice of that Court where he governed, here was the moſt fortunate Opportunity of doing it; for your Lordſhips ſhall find the very Maſters themſelves, in a manner, importuning and ſolliciting him to tie up their Hands by ſuch proper and equitable Reſtrictions, as would put the fluctuating Fortunes of their Fellow-Subjects on the firmeſt Eſtabliſhment. Had the Noble Lord liſtened to this Propoſal (which will come more properly within the Province of another Gentleman to open to your Lordſhips) the unhappy Deficiencies in the preſent Maſters Offices had been fortunately prevented, the Clamours of the World about us had been ſtopt, and the Nation eaſy. Did not Neceſſity demand it? The deplorable Havock committed ſince ſhews it did. Did not the National Voice call aloud for it? The Proſecution of this Day is ſufficient Teſtimony. Was it not his Duty? Sure I am, it would have been his Happineſs. And ſhall not the Ruin of Widows and Orphans plead for Puniſhment and Reparation? The Commons rely upon your Lordſhips Juſtice that they ſhall.

But, my Lords, there is a Charge behind, which contains Matter worthy your Obſervation; it ſets forth, That his moſt ſacred Majeſty, out of his fatherly Goodneſs to his People, having directed an Enquiry to be made into the Accounts of the Maſters in Chancery, in the Month of *November* laſt, the Earl impeached did, by his Advice and Authority, perſuade and induce them to make falſe Repreſentations of their Accounts and Circumſtances to his Majeſty in Council, and to aſſiſt one another with Caſh and Effects to make a falſe Shew and Appearance of their Ability, that a Parliamentary Enquiry might be prevented; and did oblige them to declare in Writing, at the Foot of their Accounts, That they were able and willing to pay the Ballance, although the Earl well knew many of them were not. Your Lordſhips, ſure, cannot but be aſtoniſhed at the Boldneſs of this Attempt, to defeat and fruſtrate the gracious Intentions of his moſt ſacred Majeſty, to take from his unfortunate Subjects that Redreſs and Satisfaction, which their Duty and Loyalty, their Wrongs and Sufferings had claimed in his Royal Mind; to deceive his Majeſty at the very Council-Table, where he had the Honour himſelf to ſit; and to deprive the Commons in Parliament of that Inquiſition for Juſtice, which the Nation expected at their Hands. The Dread and Apprehenſion of Parliamentary Juſtice is a ſtrong Preſumption of his Guilt. Why, my Lords, ſhould publick Enquiries terrify and diſmay an innocent Perſon? National Acquittals are eternal Monuments of Renown; they are more glorious and laſting than Pillars of Marble, or triumphal Arches; they remain upon Record to all Poſterity, never to be defaced by the Malice or Teeth of Time. But, my Lords, as there are Monuments of Praiſe, ſo there are Columns of Infamy; there are National Condemnations as well as National Acquittals; and the noble Lord muſt now take his Fate in the Judgment of your Lordſhips, which he ſo much dreaded. It is an Evidence of a Man's Crime, if he flies for it; it betrays a Self-Conviction in the Party accuſed, in that he dares not abide a Legal Trial; it is another Circumſtance againſt a Man, to be found tampering with a Witneſs, and carries with it ſome Preſumption of his Guilt; becauſe no innocent Perſon wants the Aid and Aſſiſtance of a falſe Evidence. Your Lordſhips have ſeen him as it were flying from his Tryal, and you will now find him tampering and intriguing with the Maſters in the moſt dangerous and artful manner; and that the Maſters are Evidence, and cloſe ones too, will fully appear at your Bar. You ſhall find him colouring and gloſſing over the Maſters Accounts, with Touches and Strokes of his own, hoping to ſhelter his own male Adminiſtration, by putting the Vizor of Integrity on theirs; *this* is the glorious Exit *he* makes; *thus* he finiſhes his *Impartial and Juſt Adminiſtration.*

My Lords, the Evidence to ſupport this Charge will be opened to you, by the learned Gentlemen to whom the particular Proofs are aſſigned; I ſhall not therefore take up your Time in entring upon that which exceeds my Province; I only beg leave to hope for your further Indulgence, while I make a general Obſervation or two on the Nature of the Charge.

The Ground-work and Baſis of this Noble Perſon's Crimes is Corruption, a thing in private Life the moſt deteſted, and in publick Perſons of the moſt malignant Influence to the State. It deprives the Crown of that ſolid Strength and Grandeur, that ſhining Luſtre and Beauty, which a juſt Execution of the Laws reflect upon it; it diſarms the People of that Security and Safety which naturally flows upon them from an impartial and uninterrupted Adminiſtration of Juſtice. The Conſequence of which will ever be, the Crown will loſe that proper Reverence and Veneration from the People which are its Due; and the Subjects reſtleſs, and uneaſy for want of Juſtice, will lay hold on the firſt Opportunity of throwing off Allegiance itſelf. It brings a National Reproach upon us; and, by ſowing the Seeds of Diſcontent at Home, expoſes us to the Incurſions and Depredations of our Enemies: But, my Lords, when it protects itſelf under the Shadow of Juſtice, and puts on the Smiles of Innocence, 'tis high time to riſe up in Defence of our violated Laws, and ſet a publick Mark of Infamy upon it. To what purpoſe are Judges and Miniſters reſtrained, by the Proviſion of Acts of Parliament, from ſelling Offices under their Protection and Care, if Men ſhall hide themſelves under Example in bar of the Laws! Will Example plead for him? Surely, my Lords, there are none ſuch: Or, if there were, what would that be but to defend Crimes by their own Blackneſs and Malignity? As if a Diſtemper were not to admit of any Remedy becauſe it is general and contagious. But ſuppoſing, for Argument's ſake, there have been Great Perſons, his Predeceſſors, who have ventured upon ſmall Preſents and Gifts on ſuch Occaſions, does it follow, with any colour or pretence of Reaſoning, becauſe thoſe have been confined within the Bounds of Moderation, there-

therefore the Extortion of exorbitant Sums, to connive at outragious Measures and Oppressions, exceeding almost the Fears of the Oppressed themselves, should take shelter under the poor Pretence of Precedent and Example? Alas! my Lords, I am afraid Example only operates according to Mens Appetites and Passions; else whence comes it about, that Example should have all the Beauty of an Angel in this Instance, and all the Deformity and Horror of a Fiend in another? His great * Predecessor made no Attempts to conceal a deficient Office in his Time. No, my Lords, he had no corrupt Purposes to feed. The same Noble Person never ordered some Suitors their entire Demands, and left others groaning and starving under the Pressure of an unequal Distribution; he did the direct contrary. Happy had it been for this unfortunate Person, happy for the Widows and Fatherless, had he copied after the Example of his renowned Predecessors, in their wise and upright Distribution of Justice, as well as flown to their eminent Names for Protection, in the illegal Practices wherewith he is charged! To what a low Ebb is the Virtue and Reputation of this Nation reduced, if Impunity shall justify Offences, if Bribery shall receive a Patronage from great Examples, and the basest Actions be adorned with the same Lustre and Honour, that are only due to the most virtuous. But, my Lords, the Commons have found him bargaining and bartering an † Office, in the Gift of the Crown, for the poor and sordid Advantage of an hundred Guineas. This is an Instance wherein the very Person of the King is insulted in the most flagrant manner; 'tis a Prostitution of the Regal Honour and Dignity, by one who had the Trust reposed in him, as one of the joint Guardians of the Realm during his Master's Absence: As if too there was no Access to the Throne for Grace and Favour, no tasting the refreshing Streams of that Fountain of Goodness, which rises in his Majesty's Breast, for the universal Comfort of a dutiful and happy People, but by the Assistance of the most abandoned Measures. Can your Lordships any longer wonder the People's Properties were imployed to ill Purposes, when his Majesty's Prerogative is traffick'd with and sold? Could it be expected a poor Suitor's Rights should remain secure under his Protection, as Chancellor, when the King's were precarious in the Hands of his own Trustee? And yet, my Lords, how often and how gloriously has this Nation vindicated and asserted its own Honour, in the Ruin it has poured on the Heads of corrupt Judges and Ministers! It was the Loss and Forfeiture of all the Lands and Estate of Sir *William Thorpe*, Justice of the King's Bench, who was sentenced for Bribery in the Reign of *Edw.* III. Nay, the Sentence extended even to Loss of Life itself, though that part has been thought not sufficiently warranted, and should have ended in Imprisonment only. Every one knows the Vengeance hurled on the Earl of *Middlesex*, which is to be found in the Rolls of Parliament. This unfortunate Earl, having delayed Justice to the Farmers of the Customs, in a Matter referred to him by King *James* I. and having polluted his Hands with exorbitant Bribes, was sentenced in Parliament to lose all his Offices, which he held in the Kingdom; to be for ever uncapable of any Office, Place, or Employment in the State; to be imprisoned in the Tower of *London* during the King's pleasure; to be fined 50,000 *l.* never to sit in Parliament any more, nor to come within the Verge of the King's Court. The Case of my Lord *Bacon* is another Instance of the Virtue and Integrity of your Ancestors, in the Abhorrence they shewed, and the Punishment they inflicted on that Great Man's Crimes.

My Lords, if the Offences committed by the Earl, and those of the Great Persons just mentioned were compared, and the Consequences naturally flowing from them, it would be found how much greater Guilt is comprehended in the Charge of this Day. I will not spend your Lordship's Time, in enlarging on a Distinction between Bribery *In* an Office, and Bribery *by Colour* of an Office; between Bribery in a Judicial Way, on account of Judgment in Causes, and Bribery in the Disposal of Offices, that concern the Administration of Justice; but only observe, that the Sale of the Masters Places, accompanied with the Circumstances I have already explained, is attended with more mischievous and oppressive Consequences to the Subject, than a Judge's accepting a Bribe in Causes depending before him. By means of the latter a Person is put to an extraordinary Expence indeed to come at his Right; or, if he is deprived of it by a corrupt Determination, yet still there is another Resource; and his Happiness is, that he may appeal to Parliament for Redress. But the Consequence of the other Case is, he can come at no Right at all; his Money is embezzelled and lost, the Master runs away, the Chancellor is in the Secret, and there is no Remedy left. Is it any Excuse to say, That the Master is liable to answer for his own Frauds, and not the impeached Lord? I beg only to put the following Case. If a Keeper, who has undertaken the Care and Management of a Madman, wilfully neglects his Duty, sees the disordered Person going to do Mischief, and does not interpose, is not the Keeper responsible? Surely, my Lords, by the Law of Reason he ought. But what if the Noble Lord did not foresee the Mischief, and yet be the Occasion of it, from the Exercise of an unlawful Act, there is no question but he would be answerable. A Person intends to rob the King's Forrest, and shooting at a Deer, kills the Keeper, is not he guilty of Murder? No doubt he is: Because though he did not intend Murder, yet the Act he was about, was an unlawful Act. But, my Lords, the Person at your Bar has not this Excuse; he foresaw the Consequence, and his Intention was bad.

When the Commons consider the high Station in which this noble Lord was placed, the many signal Marks of his Majesty's Favour and Munificence bestowed upon him; the notorious Breach and Violation of his Oath, and of the several great Trusts reposed in him; when they have found him prostituting and abusing the Authority and Dignity of the Crown, trampling upon the Laws and Statutes of the Realm, destroying and confounding the Properties and Rights of divers of his Majesty's Subjects; the Commons could not sit still, and see this great Offender triumph in the Luxury of unpunished Crimes, without using their best and most effectual Endeavours to bring him to Punishment, and to make him an Example of the Justice of the present Age, a Warning and a Terror to Times to come.

Sir *Clement Wearg*, Solicitor General. My Lords, I have likewise received the Commands of the Commons, to lay before your Lordships the Evidence, in maintenance of the Charge of High Crimes and Misdemeanors, against *Thomas*, Earl of *Macclesfield*.

The Nature of the Charge consists,

In illegally and corruptly Selling and Disposing of Offices, which concern the Administration of Justice; in using and practising many indirect and unjustifiable Methods, for the keeping up the Price of such Offices, in order to advance his own unjust Gain.

* *Lord* Cowper. † *Clerk of the Custodies.*

My Lords, The Honour of every Government, and the Happineſs of every Nation, depend upon nothing more than a ſtrict impartial Adminiſtration of Juſtice; and the Juſtice of every Court depends not only upon the Uprightneſs of the Judge that pronounces the Decree, but likewiſe upon the Honeſty and Uncorruptneſs of the leſſer Officers, who are Aſſiſtants to him, and upon whoſe Reports and Repreſentations his Decrees are founded.

It was doubtleſs from a juſt Senſe of this, that the Legiſlature, in the fifth Year of *Edward* VI. in order to prevent ſuch a corrupt Bartering for Offices, which was before that Statute, againſt Law, wiſely provided, that where any Office, which concerned the Adminiſtration of Juſtice, not excepted in that Statute, was procured for Money, the Office ſhould become void, and the Parties concerned in the corrupt Bargain diſabled from holding it.

The Court of Chancery, in which the Earl preſided, muſt be allowed, with regard to the Number and great Value of Suits inſtituted there, to be by far the moſt conſiderable Court of Juſtice within this Kingdom.

The Maſters of Chancery are next to the Perſon that has the Cuſtody of the Great Seal, and the Maſter of the Rolls, the great Officers of that Court.

They are, by Commiſſion under the Great Seal, aſſociated with the Judges in hearing Cauſes, and claim a Right to interpoſe their Opinions in the making of Orders and Decrees under that Commiſſion.

They are intruſted by the Court to ſtate and report Matters of Fact, upon the Truth and Fairneſs of which Reports the Juſtice of the Decree of the Court muſt depend. They are ſworn to adviſe the Chancellor himſelf.

And of late Years they have been intruſted with the Effects and Eſtates of the Suitors of the Court, to an immenſe and incredible Sum.

My Lords, great part of the Charge againſt the Earl conſiſts in ſetting up thoſe Places to Sale, in uſing unwarrantable Methods to incourage Purchaſers, and increaſe the Price.

It is Matter of great Surprize, to find in his Lordſhip's Anſwer an Inſinuation, That it is not illegal, or againſt any Statute, to ſell thoſe Offices.

Surely, my Lords, there are no Places, that concern the Adminiſtration of Juſtice, more improper to be ſold from the Nature of them, or the Selling of which is more evidently againſt the Statute of *Edward* VI. than the Maſters in Chancery, unleſs it be Judges themſelves.

But it muſt be owned, the Expreſſions made uſe of by his Lordſhip are conceived in ſuch doubtful Terms, that it is difficult to know whether he intends to repreſent the Lawfulneſs of ſelling thoſe Places for a Price, or only of taking a Preſent which the Party gives freely, voluntarily, and of his own accord, and which his Lordſhip ſays his Predeceſſors uſed to take.

There poſſibly may be a Difference between a Preſent and a Price; if there is, it is the latter his Lordſhip is charged with taking; a Price fixed by his Lordſhip, inſiſted upon, haggled for, and with Unwillingneſs paid by the Purchaſer.

But, my Lords, even this may be ſaid to be nothing more than an Offence againſt the Statute of *Edward* VI. which as it creates the Offence, ſo it preſcribes the Puniſhment,

Where the Perſon admitted to the Office is in all Reſpects equal to the great Truſt repoſed in him;

Where the Price given bears a Proportion to the lawful Gain ariſing from ſuch Office, there may be ſome pretence to ſay, It is only an Offence againſt that Statute.

But if Perſons are admitted to an Office, by which they are intruſted with near 100,000 *l.* and give as much, or more, for that Office, than their whole Subſtance amounts to;

If the Price they give is greater than can poſſiby be given, by one who would be contented with the honeſt Profits of the Office; if that Price is paid for out of the Money of the Suitors of the Court; if, to make the Officers amends for giving ſuch extravagant Prices, they are connived at, indulged, incouraged to traffick with the Money and Effects of the Suitors of the Court, lodged with them for ſafe Cuſtody only;

This is ſomething more than barely an Offence againſt the Statute of *Edward* VI.

'Tis ſelling a Licence to abuſe and defraud the Suitors of the Court, and making the Suitors themſelves pay the Price of that Licence.

It is this the Commons have charged the Earl of *Macclesfield* withal. And this ſurely is Illegal, and againſt ſome Law or Statute in being.

My Lords, the ill Conſequences of this Practice are very obvious; the leaſt of them is a Delay of Juſtice, from the Maſters uſing Shifts and Excuſes to continue that Money in their Hands, which they are allowed to make a Gain by, and which probably, when called for, may be locked up by ſome hazardous Contract.

But the moſt fatal Conſequence is, what cannot be mentioned or thought of, without feeling the greateſt Compaſſion for the unhappy People concerned in it, the Loſs which the Suitors of the Court are likely to ſuſtain by it. The Hazard was all theirs, but the Gain belonged to others.

My Lords, whatever Excuſes might be made for his Lordſhip, from the great Variety of Buſineſs his High Office engaged him in, which might prevent his Attending to thoſe Things, an Accident happened in his Lordſhip's Time, ſufficient to awaken the moſt engaged Attention.

When *Dormer* withdrew from his Office, the Maſters themſelves were alarmed at it.

When it appeared his Misfortunes were brought upon him by trafficking with the Money of the Court, and lending it to Goldſmiths at 10 *l. per Cent.* they expreſſed a Concern for the Suitors of the Court.

And, to prevent the like Miſchief for the future, a Propoſal was made to his Lordſhip by one of them, That the Maſters might give ſome Security for the Money in their Hands; that the Effects might be put in the Name of more than one Maſter, to prevent their being trafficked with.

This might have prevented the Miſchief for the future, at leaſt in ſome Degree.

But

But who then would have given 6000 *l.* for the Purchaſe of a vacant Place? Who would have given 1500 *Guineas* to procure an Admiſſion?

For theſe Reaſons the Commons charge the Propoſal was not liſtned to, was not put in Execution.

My Lords, another Accuſation againſt the Earl conſiſts in his amuſing the Suitors of the Court, with a falſe Repreſentation of the Maſters Subſtance, by declaring from the Bench, That they were Men of as good Fortunes as ever filled thoſe Places.

Such an Encomium from a Chancellor would have been a great Honour, had all the Perſons really deſerved it.

But it ſurely reflects Diſhonour, if ſpoke at a Time when ſcarce any one Perſon, who heard it, could give credit to it.

When it was the Subject of common Converſation, that one third of the Maſters had given as much, ſome of them more, for the Purchaſe of their Places, and to procure their Admiſſion, than they were worth in the World at the Time of their Purchaſe. And the Perſon, for whoſe ſake the Compliment was made, leaſt deſerved it of any; having but lately been a Receiver of a County, nominally diſcharged by ſubſtituting his Brother into his Place, and having paid off a large Arrear, ſoon after he got the Money of the Suitors into his Hands, out of that Money.

But there was then a Maſter's Place vacant.

His Lordſhip is further charged with endeavouring to conceal the Deficiency in *Dormer*'s Office;

With making a trifling, precarious Compoſition, for a large Debt aſſigned for the Benefit of the Suitor, in a very unwarrantable manner;

With making Orders for the Payment of Money out of that deficient Office, without regard to the other Suitors, who were entituled to a Proportion of what was left.

His Lordſhip ſeems to intimate, That he never thought there would be any Deficiency in that Office, but is under a full Perſuaſion that all would be made good.

How that is conſiſtent with his quitting 1500 *Guineas* from the Danger of a great Loſs in that Office, I ſhall ſubmit to your Lordſhips; but ſurely the Manner in which *Dormer* withdrew was a ſtrong Symptom of a Deficiency, when the Maſters intruſted to ſecure his Effects found little more than the Debt from *Wilſon* to anſwer a Ballance of near 40000 *l.*

When that Fund was reduced to nothing by a Compoſition made for half that Sum upon a Beggar, who has ſince eſcaped out of Goal and abſconds for Debt.

From whence thoſe full Aſſurances could ariſe, we muſt wait to hear from his Lordſhip.

That his Lordſhip did endeavour to conceal this Deficiency, needs no other Proof than his not doing any one Act in publick relating to it.

Had Mr. *Dormer*'s Perſon been rendered ſacred, by that extraordinary Promiſe of Security, mentioned in his Lordſhip's Anſwer, yet he might have been examined upon Interrogatories to diſcloſe his Effects.

The Suitors might have had ſome Warning to have uſed their Diligence in diſcovering his Eſtate, and preventing any Concealment of it.

Nothing of this done, but on the contrary; upon an Application by one of the Suitors to have his Money transferred to another Maſter, from an Apprehenſion of Loſs, after *Dormer* had abſented himſelf from the Office; he was informed from the Bench, that his Fears were raſh, the Maſter only gone to take the Air, and that all would be well.

From this Time every thing was carried on with the greateſt Privacy between his Lordſhip and the Maſters.

Orders were made for the Payment of Money out of that Office, as if it had been clear from all Suſpicions of Loſs, contrary to that Rule of Equality, which is a fundamental Principle of a Court of Equity, That where ſeveral Perſons have Demands out of a Fund like to prove deficient, they muſt bate in Proportion.

And altho' where that Fund is in the Hands of private Perſons to be paid by them, it may be intelligible to talk of judicial Knowledge, and an *ex Officio* Declaration of an Average,

Yet where the Fund is in the Hands of the Court, the Payment to be made by the Court, and the Loſs ſuſtained while the Court was poſſeſſed of that Fund.

Every Knowledge of ſuch Loſs is judicial, and the Court ought in Juſtice, by what means ſoever the Knowledge of that Loſs comes before the Court, to direct the Payment in Proportion only.

There is but one Article more that I ſhall take particular Notice of, whereby his Lordſhip is charged with endeavouring to diſappoint His Majeſty's gracious Intent of having the Accounts of the Maſters, and the State of their Office enquired into.

His Lordſhip, to put a Stop to ſuch Enquiry, perſuaded ſeveral of the Maſters to make a falſe Appearance of Subſtance, and a Shew of Readineſs to pay over the Money and Effects of the Suitors of the Court in their Hands.

This was not only a Breach of his Duty as Chancellor, but a great Violation of that high Truſt repoſed in him as he was a Privy-Counſellor; And if his Lordſhip did at the ſame time in Council ſeem to promote every Step taken there, that is a very great Aggravation of his Crime.

Such, my Lords, is the Nature of the Charge, which the Commons have exhibited againſt the Earl of *Macclesfield*; which they are able to make good by plain and clear Proof.

Sir *William Strickland.* My Lords, The Gentlemen who have ſpoke before me, having fully opened to your Lordſhips the general Charge againſt the Earl of *Macclesfield*, it is my Province, and that of the Gentleman who is to ſpeak after me, to open the Evidence we ſhall produce to make good the ſeveral Facts contained in the *5th, 6th, 7th, 8th, and 9th Articles*; but as the ninth differs very much in its Circumſtances from the other four, I ſhall ſay nothing to that Article, but leave that to the Gentleman to whom the opening of theſe Articles is likewiſe allotted.

My Lords, We ſhall ſhew you, that notwithſtanding the many *great and beneficial Favours* beſtowed upon this *Earl* by the bountiful Hand of his Majeſty; that all thoſe *Honours* conferr'd upon Himſelf and his

Family; the *Dignity* of his high Office, and the great *Truſt* repoſed in him, have been *proſtituted*, in order to ſatiate a *boundleſs Appetite* for *unlawful Gain*.

This I ſhall now particularly proceed to ſhew, by mentioning to your Lordſhips, in the firſt Place, the ſeveral *Grants* which the *Earl*, in his Anſwer, has *own'd* to have *receiv'd*; and, afterwards, by opening the Evidence, the Commons will produce, to make good their Charge contain'd in the *5th*, *6th*, *7th*, *and* *8th* Articles abovementioned, which relate to the *illegal* and *corrupt* Admiſſion of four Maſters in Chancery.

The firſt beneficial Grant the Earl, in his Anſwer *owns* to have receiv'd from his Majeſty, before the Honour of Peerage was conferr'd upon him, was 1200 *l. a Year* granted to him and his Aſſigns, during the Life of his Majeſty, in, or about *June* 1716; in the next Place, that in the Year 1718 he was created *Lord High Chancellor* of *Great Britain*; and, that at the ſame Time, his Majeſty, out of his Royal Bounty, did beſtow upon him 14000 *l* and likewiſe granted to his eldeſt Son, now Lord *Parker*, an annual Penſion of 1200 *l.* payable during the joint Lives of his Majeſty and the ſaid Lord *Parker*, but determinable whenever he ſhould be put into Poſſeſſion of one of the Offices of a *Teller* in the *Exchequer for Life*, and which Office he has ſince obtained; and over and above all theſe *great* and *beneficial Grants*, the uſual *Salary* of 1500 *l.* a Year out of the *Hanaper* Office; the other great *Profits* and *legal Perquiſites* of his high Office, the Earl owns to have had an Allowance of 4000 *l. a Year*. As theſe were all Marks of the greateſt *Honour*, *Eſteem* and *Confidence* from his Great and Munificent Benefactor, ſo ſurely they ought to have produced in him all ſuitable Returns of Gratitude, by a *juſt* and *impartial* Execution of the *Truſt* repoſed in him, to the Honour of his Majeſty, and the Good and Welfare of his Subjects.

But my Lords, The Thirſt of Gain was predominant; and in purſuance of that, he did, in a Manner highly *derogatory* to the *Dignity* of the Office he then bore, *illegally*, *corruptly* and *extorſively*, by *Himſelf* and *Servants*, *treat* and *barter* for the *Sale* of Offices of Maſters in Chancery, which Offices concern the Adminiſtration of Juſtice; and, in the *ſame* Manner, did take very great Sums of Money for their *Admiſſions* into the ſaid Offices.

I muſt take Notice that his Lordſhip, in his Anſwer, does not *deny* to have taken all the ſeveral Sums laid to his Charge by the Commons, on the Admiſſion of the Maſters, mentioned in the Articles of Impeachment, to their reſpective Offices; but alledges that he took them as *Preſents* only, *freely* and *voluntarily* given, and ſuch as had been *uſual* on ſuch Occaſions. But, my Lords, we ſhall ſhew you that the Sums of Money taken by him were taken in the *Manner* alledged in the Articles; and by the Evidence I ſhall now open, your Lordſhips will ſee how very *different* this Matter will appear from that which the Earl would inſinuate in his Anſwer; I ſhall begin by opening the Evidence to the *5th* Article, which relates to the *illegal* and *corrupt* Admiſſion of Mr. *William Kynaſton* to the Office of a Maſter in Chancery, in *Auguſt* 1721. We will ſhew you that before Mr. *Kynaſton* was admitted to be a Maſter, he was adviſed by Mr. *Rogers* (with whom he had then contracted for the Sale of his Office for 6000 *l.*) that the Lord *Chancellor* would expect 6 or 700 for his Admiſſion; upon this he applied to my Lord's Secretary, Mr. *Cottingham*, (who appears to have been the *Broker* on all theſe Occaſions) and deſired to be recommended to the *Chancellor* for that Office, and told Mr. *Cottingham*, that if it was neceſſary he could obtain my Lord *Bradford*'s Recommendation; the Secretary only anſwer'd, that another Maſter had given 1500 *Guineas* on the ſame Occaſion; Mr. *Kynaſton* then offered 1000 *l.*; *Cottingham* reply'd, he could mention nothing *leſs* to the *Lord Chancellor* than 1500 *l.*; but being afterwards asked by the Perſon who was to pay the *Money*, what Sum would be *inſiſted on*? Anſwered, It muſt be 1500 *Guineas*, nothing it ſeems was to be abated, for this (Mr. *Cottingham* told Mr. *Kynaſton*) was one of the *beſt* Offices, being the fulleſt of *Money* and *Securities*. *Money* and *Securities*, my Lords, the Property of the Suitors of the Court; and how *fatal* the Maſters making *Uſe* of ſuch Money for their *own Profits* has been, in order to *reimburſe* themſelves for the very great *Sums* paid for their Offices, is now too ſeverely felt by Numbers of helpleſs *Orphans* and *injured Suitors*. Mr. *Kynaſton*, however, ſeeing no *Poſſibility* of Admiſſion without paying the *whole Sum of* 1500 *Guineas*, comply'd at laſt, ſent *the Guineas* to Mr. *Cottingham*, who afterwards paid it to the *Chancellor*; and the next Day Mr. *Kynaſton* was admitted and ſworn a Maſter.

I come now to open to your Lordſhips, the Evidence which we ſhall produce to make good the *6th* Article, which relates to the *illegal* and *corrupt* Admiſſion of Mr. *Thomas Bennet* to the Office of a Maſter in Chancery.

Mr. *Thomas Bennet*, about *May*, 1723, bargain'd with Mr. *Hiccocks*, then a Maſter in Chancery, for the Sale of his Office, at the Price of 7500 *l.* The next Thing to be done, was to apply to Mr. *Cottingham*, which he did, deſiring to be recommended to my Lord *Chancellor* for that Office. Mr. *Cottingham* did recommend him, and told him, that the Lord *Chancellor* had no Objection to him, that he knew his Father, and ſhould be glad to *oblige* him; the Compliment, however, ended with a Propoſition of a Preſent, as he *call'd* it, and ſaid, he indeed would name no Sum, but that his Brother, then a Maſter in Chancery, and Mr. *Godfrey*, would eaſily Chalk out a *Method* for him. Mr. *Bennet*, my Lords, after conſulting theſe Gentlemen, offer'd 1000 *Guineas*; Mr. *Cottingham ſhook his Head*, and ſaid, he did not care to go to the *Chancellor* with an offer of *that* Sum, that *more* had been given, and he hoped Mr. *Bennet* would not lower the *Price*. Mr. *Bennet* gave ſome Reaſons why he hoped *Lord Macclesfield* would accept the 1000 *Guineas*, and ſaid he did not care to give more; Mr. *Cottingham* again told him, he did not care to go with *that* Meſſage; upon which Mr. *Bennet* asked him what had been given by other Maſters; *Cottingham* told him 1500 *Guineas*.

However, Mr. *Bennet* again deſired he would go to the *Chancellor*, and ſaid that if the *Sum* he had offered would not do, he would give 1500 *l.*; *Cottingham* deſired to be excuſed from going on *that* Meſſage, and ſaid my *Lord* did not love Haggling; and that if Mr. *Bennet* would give no *more*, he might *loſe* the Office, for that if the *Chancellor* ſhould refuſe *that* Sum, he would not go with any other *offer*; upon this, my Lords, Mr. *Bennet*, at *laſt*, conſented to give the 1500 *Guineas*; and this will appear to have been what the Lord *Macclesfield* calls Mr. *Thomas Bennet*'s *free Gift*. The *Guineas* were paid to Mr. *Cottingham*, who paid them to the *Chancellor*, for *which* Mr. *Bennet* was admitted into his Office, which appears to have coſt him 9075 *l.* and that very Sum, upon the making up of his Accounts, appeared to have been wanting in his Office, for the making up of his *Ballance* due to the Suitors of the Court.

I muſt

I muſt take Notice to your Lordſhips, that the *Lord Macclesfield*, in his Anſwer, alledges, that the ſaid *Kynaſton* and *Bennet* pretending they were diſabled from anſwering to the Suitors of the Court, ſo much Money as he had taken from them at their reſpective Admiſſions, the ſaid *Earl* did, *before* the Impeachment, pay into the Court of Chancery, for the Uſe of the Suitors to that Court, the two ſeveral Sums received by him from Mr. *Kynaſton* and Mr. *Bennet*; but, my Lords, that we ſhall ſhew to be a *groſs Miſtake* in the *Anſwer*, for we ſhall prove the ſaid Sums were not repaid by him till *after* the Impeachment, and after they had by Affidavit charged the Payment of theſe Sums as one *Cauſe* of the *Deficiency* in their Offices.

I come next to ſhew the *Manner* in which Mr. *Francis Elde* was admitted to his Office of a Maſter in Chancery, which happened in *February*, 1723. upon the Death of Mr. *Fellows*; we ſhall ſhew your Lordſhips, that Mr. *Elde* applied perſonally to the *Chancellor*, who told him he would *treat* with him in a *different* manner from any Man living; in two or three Days after this he applied again to the *Earl* for the Office, and then did mention a Sum of 4 or 5000 *l.* my Lord told him, Mr. *Elde* and I muſt not make Bargains. So, my Lords, Mr. *Elde* after this went to Mr. *Cottingham*, and told him of his Intention to give the Chancellor 5000 *l.* Mr. *Cottingham* adviſed him to make it *Guineas*. And, in purſuance of this Advice, Mr. *Elde* did, on or about the 1ſt of *Febr.* 1723. carry to the ſaid Lord *Macclesfield*'s Houſe 3000 *Guineas*, and 2100 *l.* in *Bank-Notes*, *muffled* up in a *Dutch-Basket*, which he ſent up to my *Lord* by Mr. *Cottingham*, who left it with his *Lordſhip*, brought down word all was well, and within a Day or two after Mr. *Elde* was ſworn into his Office.

I would obſerve upon this, That a Preſent, which might have been *innocently* made, and as *innocently* received, had needed no ſuch *ſecret* Conveyance. But, my Lords, the Suitors of the Court now began to be awakened by the Apprehenſions of their *Loſſes*, and the Voice of the People to exclaim againſt that *infamous manner* of admitting Maſters in Chancery; and therefore I preſume, my Lords, *Privacy* was now come to be thought ſo neceſſary, that the *Secretary* himſelf, tho' concerned in the Tranſaction, was kept ignorant of the Contents in the *Basket*.

I come next to open the Evidence we will produce, to prove the *illegal* and *corrupt* Admiſſion of Mr. *Mark Thurſton* to be a Maſter in Chancery, as it is laid in the VIIIth Article. He ſucceeded Mr. *Borrett* about the 5th of *Auguſt* laſt paſt: And, my Lords, notwithſtanding what the *Earl* of *Macclesfield* alledges in his Anſwer, That he was informed by Mr. *Godfrey* and Mr. *John Bennet*, that there was like to be *no Deficiency* in that Office. We will ſhew your Lordſhips, That *before* Mr. *Thurſton*'s Admiſſion there was a great *Confuſion* in it; and that his *Lordſhip* muſt have *forgot himſelf*, when he ſays he *ever* was acquainted by thoſe two Maſters, that there was like to be no Deficiency in that Office.

This, my Lords, the Commons will produce to ſhew, That, notwithſtanding the very great Loſſes already ſuſtained by the Suitors of the Court of Chancery, from the great *Prices* given by the Maſters for their Offices, the great *Confuſion* then in that Office, and in which there is a *Deficiency* of more than 10,000 *l.* yet, in the ſame *unlawful Purſuit* of *Gain*, he did admit Mr. *Mark Thurſton* to the Office of a Maſter in Chancery, for the Sum of 5000 *Guineas*. The manner of it was thus, my Lords.

Mr. *Thurſton*, upon Mr. *Borrett*'s Death, applied to Mr *Cottingham* about that Office, and the *Price* agreed upon betwixt them was 5000 *Guineas*; with this Agreement Lord *Macclesfield* was acquainted, and ſeemed to *agree* to it: But afterwards, upon a Report's being ſpread, that Lord *Macclesfield* deſigned to give the Office to Dr. *Sayer*, Mr. *Thurſton* (*well adviſed no doubt*) applied to Lady *Macclesfield*; and, after many Arguments uſed to perſuade her to write to my Lord in his Favour, produced at laſt 5000 *Guineas* in *Bank-Notes*, which had their deſired Effect; my Lady wrote, and Mr. *Thurſton* in two or three Days was admitted to his Office.

My Lords, I will make this Remark upon this Tranſaction; That the taking ſuch an extravagant Sum of Money for an Office, in which there was like to prove a great Deficiency, was ſo far from being thought *blameleſs* even by the *Earl himſelf*, that it looks as if *this Way* was neceſſary to be found out, to hide *this* Tranſaction too from the *Secretary*, who had had the firſt hand in it: And, to take all cauſe of Suſpicion away from him, he was *ordered* to be ſure to take no *Money* from Mr. *Thurſton*, on account of his Admiſſion; which he obſerved ſo religiouſly, that I think he ſcrupled even his own Fees.

Before I conclude, my Lords, I muſt take notice of an Expreſſion in the *Earl*'s Anſwer to the two laſt Articles I have mentioned.

That, of the Money he received from Mr. *Elde*, he *retained* no more than 1850 *l.* and, of that received from Mr. *Thurſton*, no more than 2000 *l.* By this, I preſume, the World is to believe, the Earl made an *immediate* Reſtitution of the Remainder of the Money: But, my Lords, we will ſhew you, that no Money was returned to Mr. *Elde* till *November* laſt, a Time that he ſtood in need of it to *ſhew* and *produce* his *Ballance*; nor to Mr. *Thurſton* till *October* laſt, at which Time it was evident an *abſolute Stop* muſt be put to the *infamous* Practice of *Stock-Jobbing* with the Suitors Money; and which of conſequence would put thoſe two Maſters out of a Poſſibility of *reimburſing* themſelves the great Sums ſo *lately* paid for their Offices.

My Lords, the next thing we ſhall prove will be, That in all theſe Tranſactions Mr. *Cottingham* has acted by my Lord *Macclesfield*'s *immediate Directions*; and when we have proved that, and the ſeveral Facts I have now opened to your Lordſhips, I doubt not but you will be of opinion, That we have fully made out the Allegations in the Vth, VIth, VIIth and VIIIth Articles, in their utmoſt Extent; and that the ſaid *Earl* has taken the ſeveral Sums, laid to his Charge, *illegally*, *corruptly* and *extorſively*, in *Breach* and *Violation* of his *Oath* as *Lord Chancellor*, and of the great *Truſt* in him repoſed, contrary to the *Duty* of his Office, and againſt the good and wholſome Statutes of this Realm.

Mr. *Doddington*. My Lords, I am commanded by the Commons to aſſiſt the Gentleman who ſpoke before me, in making good the Vth, VIth, VIIth, VIIIth and IXth Articles againſt the Earl of *Macclesfield*, which relate to his taking Money for Offices.

The Commons look upon this part of their Charge as a neceſſary Foundation of the whole, becauſe from this inſatiate Deſire of Gain has ſprung all the Evils and Miſmanagement, charged upon the Earl in the reſt of the Articles.

The Charge againſt the Earl in four of theſe Articles is, in ſhort this, That he took ſeveral great Sums for the Admiſſion of ſeveral Perſons into the Office of Maſter in Chancery; and that he took them illegally, extorſively, corruptly, in Breach and Violation of his Oath as Lord Chancellor, and of the Truſt in him repoſed.

My Lords, theſe Facts have been ſo clearly ſtated to your Lordſhips, and the extorſive and corrupt manner in which they were committed, in Breach of his Oath as Lord Chancellor, ſo ſtrongly inforced by the Gentleman who ſpoke before me, that I ſhall not trouble your Lordſhips upon thoſe Heads.

As to the Illegality of ſuch Practices, that have been laid before your Lordſhips by the learned Gentleman who opened the general Charge; and, I do not doubt, will be further explained by other Gentlemen, to your Lordſhips Satisfaction: But when the Earl is pleaſed to ſay, in his general Anſwer to all theſe Articles, "That he hopes receiving Preſents on ſuch Occaſions "is not criminal in itſelf, or by the Common Law "of this Realm, and that there is not any Act of "Parliament by which the ſame is made criminal" Though I have not had the Happineſs to have been bred to the Profeſſion, I muſt beg leave to remind him of the Statutes of *Richard* II. and *Edward* VI. as to the Statute Law: And by all that I have ever heard, or can learn, the whole Tenor and Meaning of the Common Law does diſapprove and condemn ſuch Practices, (though poſſibly it has not been an adjudged Caſe) And the Statutes I have mentioned are one Proof of ſuch Meaning of the Law, to me, at leaſt, who have always looked upon them to be Comments and Declarations, made from time to time to explain and inforce ſuch Conſtruction.

Putting up Offices of Juſtice to Auction, my Lords, is repugnant to the Dictates of plain Reaſon, and conſequently to the whole Senſe and Spirit of the Common Law of this Realm, which is founded upon Reaſon; and in this Repugnance to the Intent and Meaning of the Law of the Land, lies this Offence, (in my poor Judgment) as to the Illegality of it.

We hope therefore, my Lords, (when we have given our Evidence) that it will fully appear to your Lordſhips, from what we have opened, That the Earl of *Macclesfield* has taken the Sums charged upon him; and that he has taken them, as they are charged in the Articles, extorſively, corruptly, illegally, in Breach and Violation of his Oath as Lord Chancellor, and of the Truſt in him repoſed.

I am now come to the IXth Article, which I am commanded to open to your Lordſhips; and, indeed, it is a moſt extraordinary Inſtance of human Frailty: The Earl of *Macclesfield* here is not charged with taking Money of a Perſon who received an Office from him, but of one who quitted an Office; not for an Admiſſion, but for a Reſignation.

I believe this is the firſt Inſtance, my Lords, where any Perſon, on the other Side of this Bar, was ever accuſed of forgetting his own Dignity, the Dignity of the Auguſt Body he belonged to, and the Honour of his Soveraign, whoſe Counſellor he was, and whoſe Royal Authority was, at that time, lodged in his Hands, for an hundred and five Pounds. This is ſo amazing, that did I not know there was full Evidence, to the moſt minute Parts of this Charge, I myſelf ſhould not believe it; and I am ſure your Lordſhips Hereditary Greatneſs of Mind muſt make it ſo inconceivable to you, that I ſhall need all your Patience and Indulgence in what it is my Duty to ſtate to your Lordſhips, till you hear the Evidence we ſhall produce.

The Caſe, my Lords, is this: Mr. *Thomas Bennet*, one of the Maſters mentioned in the VIth Article, ſoon after his Admiſſion, was deſirous to part with his Office of Clerk of the Cuſtodies, (which is in the Gift of the Crown) to Mr. *Hamerſley*; but being unwilling to do any thing, without my Lord *Macclesfield*'s Approbation, he applied to Mr. *Cottingham*, his Secretary, to obtain it upon this Occaſion. Mr. *Cottingham* promiſed to acquaint his Lordſhip with this Requeſt. In a few Days Mr. *Cottingham* told Mr. *Bennet*, that he had acquainted my Lord with his Deſign, but ſaid, a Preſent was expected of him; and asked him, what he would give? (Your Lordſhips will obſerve, that this was their conſtant Method, in driving all theſe Bargains; for they were conſcious that they were doing what was illegal) Mr. *Bennet* replied, That he did not apprehend that any thing was due to my Lord on this account; for that he ſucceeded his Brother, Mr. *John Bennet*, and neither himſelf, nor his Brother, made Lord *Cowper* any Preſent: And further added, That he hoped my Lord would not inſiſt upon any thing, on ſo trifling an Occaſion, ſince he had ſo lately paid him ſo conſiderable a Sum. But ſtill *Cottingham* inſiſted that a Preſent was required. Upon which Mr. *Bennet* ſeeing himſelf ſo hard driven, ſaid he would give my Lord 105 *l.* In a few Days *Cottingham* told him, That my Lord accepted the 105 *l.* but that he was to look upon it as a particular Favour, that he accepted ſo ſmall a Sum; and that if he would bring the Money to him, *Cottingham*, he need take no farther Trouble, for my Lord would apply to the King, for Leave to reſign. Accordingly on the 28th of *July*, 1723. Mr. *Bennet* carried a *Bank-Note* of 105 *l.* to *Cottingham*; and, in about three Weeks time, (your Lordſhips will be pleaſed to remember, that his Majeſty was then abroad) *Cottingham* told him, that the Sign Manual was come over, and chid him for not taking out the Patent; The Conſequence of which was, Mr. *Bennet* did take it out, and when it came to the Great Seal, no Conſideration was had of what he had given before, but it coſt him about 64 *l.* for the Seal.

We ſhall call Mr. *John Bennet* to inform your Lordſhips, that when he reſigned to his Brother, he asked the Lord *Cowper* if any thing was due to his Lordſhip, who told him nothing was due.

This, my Lords, is the naked State of the Caſe, and I ſhall make no Remarks upon it; I think nothing can be added to illuſtrate it, becauſe I am confident there never was any thing like it.

But I think, out of Duty to the Commons, and Juſtice to the Earl of *Macclesfield*, I am obliged to take Notice of what he alledges in his own Defence againſt this Charge.

His Lordſhip is pleaſed to ſay, "That tho' this "Office of Clerk of the Cuſtodies has been uſually "granted by the Crown; yet it has been always look'd "upon as the Right of the Lords Chancellors, or the "Lords Keepers, to recommend to that, and other Of-"fices under the Great Seal, and approve of the De-"puty to execute the ſame; and upon ſuch Recom-"mendations, and approving of Deputies, have ac-"cepted Preſents, and look'd upon the ſame as their "Right.

I ſhould not have taken Notice of his putting this Part of his Defence in the plural Number, and endea-

vouring to ſhelter himſelf under the pretended Practices of his Predeceſſors, if he had confined it to this Article; but in his general Anſwer to all the Articles we have opened to your Lordſhips, he ſays, " That he " has done no more than his Predeceſſors, Great " and Able Men have done before him, and therefore " hopes that it ſhall not be imputed as a Fault to him." And indeed this Reaſoning runs through almoſt his whole Defence.

My Lords, we could ſhew, That he has done more than any of his Predeceſſors; but your Lordſhips very well know, that is not now in queſtion. I am ſure, how Great or able ſoever a Man may be, that commits a Fault, your Lordſhips will always be Great enough, and Able enough to puniſh him for it, when he comes before you. And I am ſurprized the Earl ſhould ſuppoſe, that you will connive at a corrupt Practice in him, (if this be one) becauſe you have not condemned it in others, who were never called to anſwer it before you, if any have been guilty of it. I hope your Lordſhips will look on it as a new Way of Reaſoning, firſt made uſe of by the Earl of *Macclesfield*, to juſtify his own Faults by the Faults of another, and extenuate the Danger and Malignity of a Diſtemper by the Extent and Inveteracy of it.

By the reſt of this Argument of his, your Lordſhips plainly ſee, that he himſelf thinks that the Acceptance of any Gratuity for adviſing the King, as a Counſellor, to grant this Office, had been highly Criminal, for he was, at that Time, one of the Lords Juſtices, and during this whole Charge a Miniſter of State; but he does not ſay that he obtain'd leave for Mr. *Bennet* to reſign, and a new Grant of the Office as a Favour from the Crown; no, that he ſeems to admit would have been highly blameable; but he ſays, that as Lord Chancellor, he had a Right of Recommending to this Office; and his whole Conduct unhappily explains, that he looked upon a Right of Beſtowing or Recommending to be a Right of Selling; ſo that by his own Argument, he thinks himſelf juſtifiable in doing that as the chief Officer and Diſtributor of Juſtice, which he ſeems to own would be highly unjuſtifiable in a Miniſter or Servant of the Crown.

I ſhall take Notice of but one Part more of his general Anſwer to the Articles, which we have opened to your Lordſhips, and that is where he ſays, " That during his Continuance in the ſaid " Office of Lord Chancellor, or at any other " Time, he never once had a Deſign, or View, or " Wiſh to raiſe to himſelf any exorbitant Gain " or Profit, and appeals to the whole Tenor of " his Life and Actions for the Truth of his Aſ- " ſertion.

This, my Lords, is an Inſtance how little the greateſt Men are acquainted with themſelves, and how much they are liable to miſtake, when they talk of their own Actions; many of his Tranſactions in Money Matters, have been opened to your Lordſhips, more will be opened; and ſurely, my Lords, you muſt be of Opinion, that this inordinate Longing after Gain, this Impotence of Mind where Money was concerned, is a conſtitutional Weakneſs in the Earl of *Macclesfield*, which has given a Tincture to every Thing that paſſed thro' his Hands: Your Lordſhips have ſeen him taking great Sums, accepting ſmall ones, taking 5000 *l.* accepting 105 *l.* taking for Offices in his own Gift, for Offices in the Gift of the Crown, taking for Admiſſions, taking for Reſignations; in this, indeed, he has ſhewn an Impartiality that, on every other Account, were highly to be wiſhed in a Judge.

My Lords, I would not trouble your Lordſhips again after our Evidence is examined, and therefore beg leave to ſay, that the Commons look upon theſe Practices ſo nearly to concern the Welfare of the People, they repreſent, that, notwithſtanding the great Part they bear in the Conſtitution of this Realm, they have thought it indiſpenſibly neceſſary to appear themſelves, and demand Juſtice of your Lordſhips, and we do it with the more Pleaſure, becauſe we are aſſured, That when the Commons are Proſecutors, and your Lordſhips Judges, the meaneſt Subject will have Juſtice, and the greateſt will not find Favour.

And, my Lords, conſidering that the Earl of *Macclesfield* is to be judged by the moſt auguſt Aſſembly in the World, of which he is himſelf a Member; it is but a ſuſpicious Symptom of his Confidence in his own Integrity, when he lays hold of any Subterfuge to avoid your Judgment, or endeavours to ſecure himſelf againſt any Part of it by any Plea but that of his Innocence, and the Juſtice of his Cauſe.

Sir *Thomas Pengelly*, *his Majeſty's Serjeant*. My Lords, Before the Managers lay before your Lordſhips any Evidence upon the particular Articles, there are ſome Things, we apprehend, neceſſary to be taken Notice of in the Introduction to the Articles, which are not ſufficiently admitted by the Lord *Macclesfield*, in his Anſwer, and wherein we apprehend it will be neceſſary to give your Lordſhips ſome Satisfaction; and that is relating to his immediate Duty as Lord Chancellor, and the Obligation he is under of an Oath, which is adminiſtred to his Lordſhip, and is eſtabliſhed by Act of Parliament. My Lords, We think it proper to lay this before your Lordſhips, becauſe the noble Lord has forgot it, not only in his Anſwer, but in his Conduct. The Oath is eſtabliſh'd by the Statute of the 12*th* of *Rich.* 2. which enacts, *That the Chancellor*, &c. *ſhall not name or make any Officer, or Miniſter, of the King, for any Gift, or Brocage, but make all ſuch Officers and Miniſters of the beſt and moſt lawful Men.*

My Lords, I beg leave to ſhew, that this Oath is eſtabliſh'd by Act of Parliament, and afterwards ſhew your Lordſhips, that it has been adminiſtred to, and taken by the noble Lord within the Bar. It is the Statute of the 12*th* of *Rich.* 2. *Chap.* 2. which enjoyns this Oath to be taken by his Lordſhip.

Mr. *Lutwyche*. My Lords, We are not willing to trouble your Lordſhips with more than is neceſſary, or to go about to prove thoſe Things that are admitted by the Earl's Anſwer, but where they are not fully admitted in ſuch a Manner as they are charged, and with all that Advantage that we think we can make of them, we muſt beg leave to trouble your Lordſhips with the Proof of them. My Lords, It is admitted by the Anſwer, that there was an Oath of Office taken; and it is likewiſe ſet forth in the Anſwer, what that Oath was, but the Anſwer goes no farther, and

doth not admit any Thing as to another Oath founded on the Statute of the 12*th Rich.* 2. which hath frequently been taken by the Noble Lord; we think it therefore neceſſary to have the Statute of *Rich.* 2. firſt read, and the Oath that is there preſcribed, and to ſhew you that the Noble Lord within the Bar, did take that Oath ſeveral Times.

Then the Clerk read the Statute of 12 *Rich.* 2. *Cap.* 2. *viz.*

" *Item*, It is accorded that the Chancellor, " Treaſurer, Keeper of the Privy-Seal, Steward " of the King's Houſe, the King's Chamberlain, " Clerk of the Rolls, the Juſtices of the one " Bench and of the other, Barons of the Exchequer, " and all other that ſhall be called to ordain, " name, or make Juſtices of Peace, Sheriffs, Eſ- " cheators, Cuſtomers, Comptrollers, or any other " Officer or Miniſter of the King, ſhall be firm- " ly ſworn, that they ſhall not ordain, name, or " make Juſtices of Peace, Sheriff, Eſcheator, " Cuſtomer, Comptroller, nor other Officer, nor " Miniſter of the King, for any Gift or Brocage, " Favour or Affection; nor that none which pur- " ſueth by him, or by other, privily or openly to " be in any manner of Office, ſhall be put in the " ſame Office, or in any other, but that they " make all ſuch Officers and Miniſters of the " beſt and moſt lawful Men, and ſufficient to " their Eſtimation and Knowledge."

Mr. Serjeant Pengelly. We beg leave that Mr. *Eyre* may be produced and ſworn, in order to prove the Adminiſtration of this Oath, and to prove the Noble Lord's taking it ſeveral Times.

Mr. *Thomas Eyre* Sworn.

Mr. Serjeant Pengelly. My Lords, We deſire that Mr. *Eyre* may be asked, Whether he is an Officer of the Exchequer, and what that Book in his Hand is?

Mr. Eyre. My Lords, This Book I have had in my Cuſtody ever ſince I have been in the Office. I have been there forty Years. This is the Book in which the Statute of 12 *Rich.* 2. is enter'd; and, before the Privy Council name the Sheriffs, this Statute is read over to them, and then the Privy Counſellors are all Sworn.

Mr. Lutwyche. My Lords, We deſire the Oath may be read.

Mr. Eyre. There is no Oath in the Book, 'tis only the Statute.

Earl of Macclesfield. Will your Lordſhips be pleaſed that he may ſpeak aloud. He ſays there is no Oath in the Book.

Mr. Eyre. The Statute is read, and as ſoon as it is read the Book is preſented to the Privy Counſellors, and they are Sworn.

Mr. Serjeant Pengelly. My Lords, We deſire he may be asked, Whether he was preſent at any Time when the Earl of *Macclesfield* has taken the Oath to perform this Statute in the Court of Exchequer?

Mr. Eyre. Yes, ſeveral Times.

Earl of Macclesfield. I beg leave to ask this Queſtion in the firſt Place, Is there any Oath there in that Book?

Mr. Eyre. No, nothing but the Statute of *Rich.* 2.

Earl of Macclesfield. Nothing but the Statute of *Rich.* 2. What is it you read, or do at that Time when you ſay the Privy Counſellors are ſworn.

Mr. Eyre. As ſoon as this Statute is read, the Bible is preſented to the Privy Counſellors, and they kiſs the Book.

Earl of Macclesfield. Is there any one Word ſaid to them, or by them?

Mr Eyre. No, the Statute is read over, and the Privy Counſellors kiſs the Book.

Mr. Serjeant Pengelly. My Lords, We deſire he may read it.

Earl of Macclesfield. My Lords, I deſire that he may read the very Words in the Book, as he reads them in the Exchequer.

[Mr. *Eyre* reads the Statute.]

Anno xii Richardi Secundi.

ITEM, Accorde eſt & aſſentuz' que le Chancellor & Treaſurer Gardein du Privy Seal Seneſcall' de Hoſteil le Roy, Chamberleyn du Roy, Clerke du Rolls, Juſtices de lune Bank & de Lautre, Barons de le Exchequer & toutz autres, que Serrount Appelles Dordoigner nomer ou fair Juſtices de la Peaze, Viſcounts Eſcheators, Cuſtomers Comptrollers, ou Aſcun autre Officer du Roy, ou Miniſtre, ſeroit firmement Jurez, & Serementez, quils ne Ordeigne nōient ne facent Juſtices de la Peas, Viſcounts Eſcheators, Cuſtomers Comptrollers, ne null autre Officer ne Miniſtre du Roy, pur null' manner Don' ne Brocage favor n' affection, nique null que parſui par luy ou par autr' en priv' ou en Apert Deſtre en Aſcun manner Office, ſoit mijs en meſme l'Office, ou en Aſcune autr', unque que ils facient toutz tielz Officers & Miniſters de le pluis Bon & Loyalz & les pluis ſufficientz a lour eſſient & lour Conſcience.

Earl of Macclesfield. Thoſe you ſay are the very Words you read at that Time when the Sheriffs are nominated in the Court of Exchequer?

Mr. Eyre. Yes.

Earl of Macclesfield. I ſuppoſe you read in that very Manner.

Mr. Eyre. Yes.

Earl of Macclesfield. Do you ſay any one Syllable more?

Mr. Eyre. No.

Earl

E. of *Macclesfield.* In the next place, I desire he may tell your Lordships what it is that the Officer does at this time?

Mr. *Eyre.* He carries the Book to all the Privy Counsellors, and they kiss it.

E of *Macclesfield.* Does he not carry it to the Judges too?

Mr. *Eyre.* Yes, every one present kisses the Book.

E. of *Macclesfield.* Does he say any thing to them?

Mr. *Eyre.* No.

E. of *Macclesfield.* You say he doth not say any thing to them?

Mr. *Eyre.* No, nothing at all.

Mr. Serj. *Pengelly.* My Lords, we desire that Mr. *Eyre* may be asked, whether, during his time, this hath not been the usual Method of Swearing the Lords of the Privy Council?

Mr. *Eyre.* Yes, my Lords, it has.

Mr. *Lutwyche.* My Lords, it seems to be a Question whether this is Swearing at all. Therefore the Question I desire may be ask'd this Witness, is, what Book it is they kiss?

Mr. *Eyre.* My Lords, it is the Bible.

Mr. *Lutwyche.* I desire he may be asked, whether this hath not been taken to be Swearing them to do what is commanded by this Statute?

Mr. Serj. *Probyn.* My Lords, we beg Leave to object to that Question. We apprehend the Witness is only called to give Evidence as to the Fact, and not to state his Reasons and Constructions of Fact.

Mr. *Lutwyche.* My Lords, I beg Leave then to ask a Question that I hope they won't object to: Whether or no this is not the Manner of Swearing the Lords, upon the Nomination of Sheriffs in the Court of Exchequer?

Mr. Serj. *Probyn.* My Lords, we humbly beg Leave to object to that Question: We apprehend That Centers in the same thing with the former. The Witness has already given your Lordships an Account of all that is said and all that is done when this Act of Parliament is produced. He tells your Lordships the Act of Parliament is read; they kiss the Book; nothing is asked of them, nor is any thing answered: And yet the Gentleman is pleased to ask, whether this is called a Swearing? The Witness has given his Evidence, your Lordships will determine whether it be a Swearing or no.

Mr. *Lutwyche.* My Lords, I desire he may be asked, whether this Kissing the Bible upon the reading this Act, is not usually done at the time of appointing the Sheriffs?

Mr. *Eyre.* As soon as ever the Act is read over, the Privy-Counsellors kiss the Bible.

Mr. Serj. *Pengelly.* My Lords, I desire it may be asked, whether they proceed to name or appoint any Sheriffs before they kiss the Book in this manner?

Mr. *Eyre.* No, they do not.

Mr. Serj. *Pengelly.* My Lords, we shall rest this matter here.

Lord *Lechmere.* My Lords, I would be glad if this Question might be asked the Witness; Whether there is any Entry or Memorandum made upon Record in the Court of Exchequer, of any Oath taken by the Privy-Counsellors on this Occasion?

Mr. *Eyre.* No, there is not.

Mr. *West.* We submitt this Matter to your Lordships: This Statute prescribes, that an Oath shall be particularly taken; the Fact has been stated by the Witness: And whether it does not amount to the Proof of an Oath, that they will comply with that Act of Parliament, we leave to your Lordships Judgment.

Mr. Serj. *Pengelly.* We shall leave this Evidence to your Lordships, and submit it to your Determination, whether this noble Earl can excuse himself from his Obligation to this Act of Parliament, as an Oath? It is very probable; by his future Conduct, he might be of Opinion, that there was no Obligation of any Act or Oath upon him: But upon the Evidence given, we shall submit this Fact: And shall next proceed to call some Witnesses to give an Account of the Nature of the Offices of the Masters in Chancery; who are admitted, by the noble Lord, within the Bar. We shall first produce the Oath which is administred to every Master in Chancery upon his Admission: Then we shall shew the Commissions from *Edw.* the VIth's time, and so from time to time, to this Day; wherein the Masters in Chancery are joined with my Lords the Judges, to hear and determine Causes in the Absence of my Lord Chancellor; to punish Contempts, to execute and administer a Jurisdiction in that Court. The particular Oath very little varies from the Oath administred to the Lord Chancellor, which, in his Lordship's Answer, is set out at large. However we shall now beg Leave to produce the Oath; and to that Purpose, we desire Mr. *Pynsent*, the Deputy-Clerk of the Crown in Chancery, may be examined, and he will produce the Oath before your Lordships.

Mr. *Pynsent* sworn.

Mr. Serj. *Pengelly.* Sir, will you produce, before the Lords, the Oath administred to the Masters in Chancery, upon their Admission to their Offices?

Mr. *Common Serjeant.* My Lords, we hope he shall give an Account, whether he hath seen the Oath taken, and hath administred it?

Mr. *Pynsent.* Yes, my Lords, I have seen the Oath taken, and have administred it myself.

Reads the Oath.

Sacrm Magistrorum Cancellarie } *YE shall swear that well and trulie Ye shall serve the Kinge Our Sovereigne Lord, and his People, in the Office of one of the Maisters of his Chauncerye, to the whiche Ye be called: Ye shall not assent, ne Procure the Disherytaunce, ne perpetual Damage of the Kinge, to Your Power, ne fraude; Ye shall doe or cause to be made wrongefullye to anye of his People, ne in anye thinge that touchethe the Seale: And lawfullye Ye shall Counsail the thinges that touchethe the Kinge, when ye shall be thereunto required. And the Counsayll that Ye shall geve touching him, Ye shall not disclose. And yf Ye know anye thinge of the Disheretaunce or Damage of the King, or fraude to be made upon anye thinge that touchethe the keeping of the Seale: Ye shall put Your lawfull Power it to redresse and amende; And yf that Ye cannot do, Ye shall advyse the Chauncellor, or Lorde Keper of the Seale, or other whiche may that amende, to Your Power. As God you helpe, and by the Content of this Boke.*

Mr. Serj. *Pengelly.* My Lords, there will be Directions given to lay a Copy of this Oath, as well as Copies of other Records, upon your Lordships Table.

The next Evidence we shall produce, are Commissions beginning in the Time of *Edw.* 6. to this time, granted to Masters, appointing them to hear Causes, *&c.* The first Commission we shall

produce, is dated the 9th of *October*, the 4th of *Edw. 6.* My Lords, we desire that Mr. *Paxton* may be sworn, who has Copies of these Commissions, and has examined them with the Records.

Mr. *Ralph Paxton* sworn.

Mr. Serj. *Pengelly.* My Lords, we desire that he may be asked, whether the Copies in his hand are true Copies, and where they were examined?

Ld. Ch. Just. *King.* Are they true Copies, and where did you examine them?

Mr. *R. Paxton.* My Lords, they are true Copies. I examined them in several Places. I must look upon each of them, and then I shall tell your Lordships where I examined them. I examined some at the Rolls, some at the Petty-Bag Office, and some at the Report-Office.

Ld. Ch. Just. *King.* Did you examine them all there?

Mr. *R. Paxton.* I did.

Mr. Serj. *Pengelly.* Are they true Copies?

Mr. *R. Paxton.* I believe they are, I took a great deal of Care and Pains in examining of them.

Mr. Serj. *Pengelly.* My Lords, we desire that these Copies may be read.

Mr. *Strange.* Are they upon Stamps?

Mr. *R. Paxton.* Yes, Sir, with a double Sixpenny Stamp.

Mr. Serj. *Pengelly.* My Lords, it seems they are Stampt, since they make an Objection of that Nature, we desire they may be read.

Clerk reads.

Sexta pars Pat' de Anno Regni Regis Edri Sexti quarto.

Rex &c. Dilcis & fidelibus Consiliarijs Suis Rbto Southwell Militi Custodi ac Magro Rotulorum Cancellar' nre Willo Portman Militi uni Justic' nrorum ad Plita coram Nob' tenend' assign' Jacobo Hales Militi uni Justic' nrorum de Banco Rico Reade Militi et Johi Tregonwell Aro Magris Cancellar' nre predce Ac Dilcis Sibi Johi Olyver Clico Willo Cooke Aro Johi Croke Aro et Anthonio Bellasis Clico Magris ejusdem Cancellar' nre Saltm. Quia Predilcus et fidelis Consiliarius nr' Ricus Riche Miles Dus Riche Cancellar' nr' Angl' adeo Corporis invalitudine ad presens laborat qd ad ea que in Cur' Cancellar' nre in causis et materijs int' diversos ligeos & Subditos nros ibidem pendent' tractend' audiend' discuciend' et terminand' Sint & fieri debeant ad presens pro tempore non Sufficiat Considerantes igitur ipm ad Saltm cicius posse restitui Si ab arduis negocijs nris et detminacoe causarum in Cur' Cancellar' nre penden' ad tempus abstineat Et Volentes nichilominus interim in ejusdem Cancellarij nri absencia omibus & Singulis ligeis & Subditis nris quibuscumq; matias suas in Cur' Cancellar' nre predce prosequentibus plenam & celerem Justiciam exhiberi Ac de fidelitatibus & providis circumspeccoibus vris plenius Confidentes Assignavimus Vos octo Septem Sex quinq; quatuor & tres vrm quorum Vos prefat' Robte Wille Porteman Jacobe Hales Johes Olyver & Johes Croke unu' esse Volumus Ac tenore presenciu' Damus Vob' octo Septem sex quinq; quatuor & tribus vrm quorum aliquem vrm Vos prefat' Robte Wille Porteman Jacobe Hales Johes Olyver & Johes Crooke unu' esse Volumus plenam potestatem & auctoritatem audiend' et examinand' quascumq; materias causas & peticoes coram Nob' in Cancellar' nra int' quoscumq; ligeos et Subditos nros tunc pendent' et imposterum ibidem exhibend' & penden' & easdem matias causas & peticoes juxta Sanas discrecoes vras finalit' tminand' & debit' execucoi demandand' partesq; in matijs Sive causis vel peticoibus illis noiatas & Specificatas ac testes & alios quoscumq; quos Vob' fore videbitur evocand' quociens expedire videritis coram Vob' octo Septem Sex quinq; quatuor vel tribus vrm quorum aliquem vrm vos prefate Robte Wille Portman Jacobe Hales Johes Olyver & Johes Croke unu' esse Volumus evocand' ac ipos & eorum quemlt debite examinari compellend' diesq; productorios imponend' & assignand' processusq; quoscumq; in ea parte necessarios concedend' et fieri faciend' contemptus etiam quoscumq; ibidem comiss' Sive perpetratos debite castigand' & puniend' cetaq; omia & Singula faciend' et exequend' que circa premissa necessaria fuerint Seu quomodolit oportuna Et ideo Vob' Mandamus qd circa premissa diligent' intendatis ac ea fac' & exequamini cum effcu Mandamus etiam tenore presenciu' omibus & Singulis Officiarijs & Ministris nris Cur' nre predce qd Vob' octo Septem Sex quinq; quatuor et tribus vrm quorum aliquem vrm Vos prefate Robte Wille Porteman Jacobe Johes Oliver et Johes Croke Semper unu' esse Volumus in execucoe premissorum diligent' intendant prout decet Volumus etiam & per presentes Concedimus qd omia & Singula judicia Sive finalia decreta per Vos octo Septem Sex quinq; quatuor vel tres vrm quorum aliquem vrm Vos prefate Robte Wille Porteman Jacobe Johes Olyver et Johes Crooke unu' esse Volumus Semper hmoi causis Sive materijs reddend' Sive fiend' Sint & esse debeant tanti & consimilis valoris effcus efficacie roboris et virtutis ac si per Cancellariu' nrm Angl' et Cur' Cancellar' predce reddit' Sive reddend' forent Proviso Semper qd omia & Singula hujusmodi judicia Sive finalia Decreta per Vos octo Septem Sex quinq; quatuor vel tres vrm quorum aliquem vrm Vos prefate Robte Wille Porteman Jacobe Johes Olyver et Johes Croke unu' esse Volumus virtute presenciu' reddend' Sive fiend' manibus vris octo Septem Sex quinq; quatuor vel tres vrm quorum aliquem vrm Vos prefate Robte Wille Porteman Jacobe Johes Olyver & Johes Croke unu' esse Volumus Subscribantur & consignentur & Superinde eadem judicia Sive decreta prefat' Cancellar' nro presententur & libentur ut idem Cancellar' nr' antequam irrotulentur eadem Similit' manu sua consignet In cujus rei testimoniu' has Lras nras fieri fecimus Patentes usq; ultimu' diem Novembr' proper' futur' duratur' Si non intrim per alias Lras nras Patentes huic Comissioni Supersederi decreverimus T. R. apud Westm' nono die Octobr'

per ipm' Regem
Concordat' cum Recordo et
Examinat' per me
WM. ROOKE.

Mr. Serj. *Pengelly.* We have several others of the same Nature, which we have proved, and shall not trouble your Lordships to read them. We shall beg Leave to lay them on your Lordships Table. We shall now destre to read some later Commissions; some granted when the noble Lord within the Bar had the Custody of the Seals himself.

E. of *Macclesfield.* If your Lordships please, the Date of that may be read.

Clerk reads.

'GEORGIUS Dei Gra' Magnæ Britanniæ Franciæ & Hibniæ Rex fidei defen-
'sor &c. Prædilecto & fideli Consiliario nro Jo-
'sepho Jekyll Mil' Magro Rotlorum Cur' Canc'
'nre ac Dilcis' & fidelibus nris Littleton Powys
'Mil' un' Justiciar' nrorum ad plita coram nobis
'tenend' assign' Johi Blencow Mil' un' Justiciar'
'nrorum de Banco Robto Tracy Ar' al' Justi-
'ciar' nrorum de Banco Robto Price Ar' un' Ba-
'ron'

‘ron’ Sccij nri Johi Smith Ar’ al’ Baron’ Sccij nri ‘Robto Dormer Ar’ un’ Juſticiar’ nrorum de ‘Banco Robto Eyre Mil’ un’ Juſticiar’ nrorum ‘ad plita coram nobis tenend’ aſſign’ Johi ‘Pratt Mil’ al’ Juſticiar’ nrorum ad plita coram ‘nobis tenend’ aſſign’ Jacobo Mountagu Mil’ ‘un’ Baron’ Sccij nri Johi Forteſcue Aland Mil’ ‘un’ Baron’ Sccij nri Thome Gery Mil’ Willo ‘Rogers Johi Hiccocks Willo Fellows Jacobo ‘Meller Johi Orlebar Fleetwood Dormer Samu‑‘eli Browning Robto Holford Henrico Lovi‑‘bond & Johi Bennett Aris ſaltm Quia predilect’ ‘& fidel’ Conſiliar’ noſtr’ Thomas Doms Parker ‘Cancellar’ noſtr’ magne Britannie nris arduis ‘negotijs ex Mandato nro continue attendens in ‘eisdm’ adeo verſatur quod continue attendere ‘non poteſt ea que in Cauſis & materijs in‑‘ter diverſos ligeos & ſubditos nros ac alios in ‘Cur’ nra Cancellar’ penden’ agen’ tractand’ ‘audiend’ expediend’ diſcutiend’ & terminand’ ‘ſint & fieri debent Nos premiſſa Conſiderantes ‘volenteſq; eibus & ſingulis ligeis nris ac alijs ‘quaſcunq; materias ſuas in eadm’ Cur’ Cancel‑‘lar’ proſequen’ ſive proſecutur’ plenam & celerem ‘Juſticiam exhiberi tam in abſentia quam in pre‑‘ſentia predict’ Cancellar’ noſtr’ Magn’ Britann’ ‘ac de fidelitate & providis circumſpeciobus ‘vris in hac parte plumu’ confidente aſſigna‑‘vimus vos ac tenore prentium Damus vob’ & ‘aliquibus tribus vel plur’ vrum Quorum prefat’ ‘Joſephum Jekyll Littleton Powys Johem Blen‑‘cowe Robtum Tracy Robtum Price Johem ‘Smith Robtum Dormer Robtum Eyre Johem ‘Prat Jacobum Mountagu & Johem Forteſcue ‘Aland unum eſſe volumus in abſentia dict’ Can‑‘cellar’ noſtr’ Magnæ Britanniæ plen’ prefat’ ‘& auctat’ audiend’ & examinand’ quaſcunque ‘materias Cauſas & petitiones coram nobis in ‘dca Cancellar’ nra inter quoſcunque ligeos & ‘ſubditos aut alios quoſcunque nunc penden’ ‘aut Impoſter’ ibm exhibend’ & penden’ mate‑‘rias Cauſas & peticones juxta ſanas diſcreti‑‘ones vras vel trium vrm Quorum prefat’ Joſe‑‘phum Jekyll Littleton Powys Johem Blencowe ‘Robtum Tracy Robtum Price Johem Smith ‘Robtum Dormer Robtum Eyre Johem Pratt ‘Jacobum Mountagu & Johem Forteſcue Aland ‘unum eſſe volumus finaliter terminand’ & debit’ ‘execution’ demandand’ Parteſq; in materiis cau‑‘ſis ſeu petitionibus illis nominat’ & ſignificat’ ac ‘Teſtes & alios quoſcunq; quos vobis vel tribus ‘vrm (ut pred’ eſt) fore videbitur evocand’ ‘quoties expedire videritis coram vobis vel tribus ‘vrm (ut pred’ eſt) evocand’ Ac ipſos & eorum ‘quemlibet debite examinari dieſq; productiores ‘imponend’ & aſſignand’ proceſſuſq; quoſcunq; ‘in ea parte neceſſar’ concedend’ ac fieri faciend’ ‘Contemptus etiam quoſcunq; comiſs’ ſive per‑‘petrat’ debite caſtigand’ & puniend’ ceteraq; ‘oia & ſingla faciend’ & exequend’ que circa ‘premiſſa neceſſar’ fuerint ſeu quomodolibet op‑‘portuna Et ideo vobis mandamus qd circa pre‑‘miſſa diligent’ intendatis & ea fat’ exequamini ‘cum efftu Mandamus etiam tenore prentium Of‑‘ficiar’ & Miniſtr’ Cur’ nre Canc’ pred’ qd vobis ‘vel tribus vrm (ut pred’ eſt) in execuc’ premiſ‑‘forum diligenter intendant prout decet Volumus ‘etiam ac per prentes concedimus qd oia & ſin‑‘gula Judicia ſive finalia decreta ac Ordines per ‘vos aut tres vrm ut præd’ eſt ſuper hum’ cauſis ‘ſive materijs ac peticioibus ut prefertur reddend’ ‘ſive fiend’ ſint & eſſe debeant tanti & conſilis ‘valor’ effect’ efficatie roboris & virtute Ac ſi per ‘præd’ Cancellar’ noſtr’ Magnæ Britanniæ & Cur’ ‘Cancellar’ nre præd’ reddit’ ſive reddend’ forent ‘Proviſo tamen quod oia & ſingula Judicia ſive ‘finalia decreta per vos vel tres vrm ut præd’ eſt ‘virtute prentium modo & forma ut prædicitur ‘reddend’ ſive fiend’ Manibus vris vel trium vrm ‘Quorum prefat’ Joſephum Jekyll Littleton ‘Powys Johem Blencowe Robtum Tracy Rob‑‘tum Price Johem Smith Robtum Dormer Rob‑‘tum Eyre Johem Pratt Jacobum Mountagu & ‘Johem Forteſcue Aland unum eſſe volumus ſub‑‘ſcribentur & conſignentur & ſuperinde eadem ‘Judicia ſive finalia decreta prefat’ Cancellar’ ‘noſtr’ Magn’ Britan’ preſententur & libentur ‘Quodq; null’ eorundem Judicior’ ſive final’ de‑‘cretor’ irrotulentur aut quoviſmodo execut’ ſint ‘antequam idem Cancellar’ noſtr’ Magn’ Britann’ ‘ea manu ſua propria ſiliter conſignet Et quod he ‘lre nre Patentes durabunt & permanebunt in ‘pleno robore & effect’ donec aliter per alias lras ‘nras Patentes huic Commiſſioni ſuperſederi ‘mandat’ foret aut prædict’ Cancellar’ noſtr’ ‘Magn’ Britann’ in plena Cur’ determinari de‑‘cret’ & irrotulat’ erit In cujus rei Teſtimoniu’ ‘has lras nras fieri fecimus Patentes Teſte meipſo ‘apud Weſtm’ duodecimo die Maij Anno Regni ‘noſtri quarto

per ipſum Regem

WRIGHTE.

Mr. Serj. *Pengelly.* We deſire that there may be another Commiſſion read, dated the 20th of *January*, the 8th of the King.

Clerk reads.

‘GEORGIUS Dei Gratia Magnæ Bri‑‘tanniæ, Franciæ, & Hiberniæ Rex, fidei ‘Defenſor, &c. Prædilecto & fidel’ Conſiliar’ ‘nro Joſepho Jekyll Mil’ Magro Rotulor’ Cur’ ‘Cancellar’ nre ac Dilcis & Fidelibus nris Little‑‘ton Powys Mil’ un’ Juſtic’ nroru’ ad plita co‑‘ram nobis tenend’ aſſign’ Johi Blencow Mil’ ‘un’ Juſtic’ nrorum de Banco Robto Tracey Ar’ ‘al’ Juſtic’ nrorum de Banco Robto Price Ar’ ‘un’ Baron’ Sccij nri Robto Dormer Ar’ un’ ‘Juſtic’ nrorum de Banco Robto Eyre Mil’ un’ ‘Juſtic’ nrorum ad plita coram nob’ tenend’ ‘aſſign’ Jacobo Montagu Mil’ un’ Baron’ Sccij ‘nri Johi Forteſcue Aland Mil’ un’ Juſtic’ ‘nrorum ad plita coram nob’ tenend’ aſſign’ ‘Franco Page Mil’ un’ Baron’ Sccij nri Johi ‘Hiccocks, Willo Fellowes, Robto Holford, ‘Henco Lovibond, Johi Bennett, Rico Godfrey, ‘Jacobo Lightbonn, Johi Borrett, Edro Con‑‘way, Henco Edwards, & Willo Kynaſton, Ar’ ‘ſalum. Quia Chariſſimus Conſanguineus & Con‑‘ſiliar’ noſter Thomas Comes de Macclesfield ‘Cancellar’ noſter Magnæ Britanniæ noſtris ar‑‘duis negotiis ex Mandato noſtro continue at‑‘tendens in eiſdem adeo verſatur quod continue ‘attendere non poteſt ea que in Cauſis & Ma‑‘teriis inter diverſos ligeos & ſubditos noſtros ac ‘alios in Cur’ noſtra Cancellar’ penden’ agen’ ‘tractand’ audiend’ expediend’ diſcutiend’ & ‘terminand’ ſint & fieri debent nos premiſſa ‘conſiderantes volenteſq; omnibus & ſingulis ‘ligeis noſtris ac aliis quaſcunq; materias ſuas ‘in eadem Cur’ Cancellar’ proſequend’ ſive pro‑‘ſecutur’ plenam & celerem Juſticiam exhiberi ‘tam in abſentia quam in præſentia præd’ Can‑‘cellar’ noſtri Magnæ Britanniæ ac de fidelitate ‘providis Circumſpectionibus vris in hac parte ‘plurimum Confidentes Aſſignavimus vos ac te‑‘nore preſent’ Damus vob’ & aliquibus tribus ‘vel plur’ vrm’ Quorum prefat’ Joſephum Jekyl

‘ Littleton

‘ Littleton Powys Johem Blencowe Robtum Tra-
‘ cey Robtum Price Robtum Dormer Robtum
‘ Eyre Jacobum Montagu Johem Forteſcue A-
‘ land & Francum Page unum eſſe Volumus in
‘ abſentia dicti Cancellar’ noſtri Magnæ Bri-
‘ tanniæ plen’ poteſtat’ & Authoritat’ audiend’ &
‘ examinand’ quaſcunq; materias cauſas & peti-
‘ tiones coram nob’ in dicta Cancellar’ noſtra
‘ inter quoſcunq; ligeos & ſubditos aut alios
‘ quoſcunq; nunc penden’ aut impoſter’ ibidem
‘ exhibend’ & penden’ & eaſdem materias cauſas
‘ & petitiones juxta ſanas diſcretiones vras vel
‘ triu’ vrm’ Quorum prefat’ Joſephum Jekyl
‘ Littleton Powys Johem Blencowe Robtum
‘ Tracey Robtum Price Robtum Dormer
‘ Robtum Eyre Jacobum Montagu Johem For-
‘ teſcue Aland & Francum Page unum eſſe Vo-
‘ lumus finalit’ terminand’ & debit’ execution’
‘ demandand’ parteſq; in materiis cauſis ſeu
‘ petitionibus illis noiat’ & ſpecificat’ ac teſtes
‘ & alios quoſcunq; quos vob’ vel tribus vrm’
‘ (ut præd’ eſt) fore videbitur evocand’ quoties
‘ expedire videritis coram vob’ vel tribus vrm’
‘ (ut præd’ eſt) evocand’ ac ipſos & eorum quem-
‘ libet debite examinari compellend’ dieſq; pro-
‘ ductiores imponend’ & aſſignand’ proceſſuſq;
‘ quoſcunq; in ea parte neceſſar’ concedend’ ac
‘ fieri faciend’ contemptus etiam quoſcunq; comiſs’
‘ ſive perpet’ debit’ caſtigand’ & puniend’ ceteraq;
‘ oia & ſingula faciend’ & exequend’ que circa
‘ præmiſſa neceſſar’ fuerint ſeu quomodo libet
‘ opportuna. *Et Ideo* vob’ mandamus quod
‘ circa præmiſſa diligent’ intendatis & ea fac’ &
‘ exequamini cum effectu. *Mandamus* etiam te-
‘ nore preſentiu’ officiar’ & miniſtr’ Cur’ noſtre
‘ Cancellar’ præd’ quod vob’ vel tribus vrm’ (ut
‘ præd’ eſt) in executione præmiſſorum diligent’
‘ intendant prout decet Volumus etiam & per
‘ preſentes concedimus quod oia & ſingula ju-
‘ dicia ſive final’ decreta ac ordines per vos &
‘ tres vrm’ (ut præd’ eſt) ſuper hum’ cauſis ſive
‘ materiis & petitionibus ut prefert’ reddend’
‘ ſive fiend’ ſint & eſſe debeant tanti & conſilis
‘ valor’ effectus efficacie roboris & virtutis ac
‘ ſi per præd’ Cancellar’ noſtr’ Magnæ Britan-
‘ niæ & Cur’ Cancellar’ noſtre præd’ reddit’ ſive
‘ reddend’ forent. *Proviſo* tamen quod oia &
‘ ſingula judicia ſive finalia decreta per vos vel
‘ tres vrm (ut præd’ eſt) virtute preſent’ modo
‘ & forma ut predicitur reddend’ ſive fiend’ ma-
‘ nibus vris vel triu’ vrm’ Quorum prefat’ Jo-
‘ ſephum Jekyl Littleton Powys Johem Blen-
‘ cowe Robtum Tracey Robtum Price Robtum
‘ Dormer Robtum Eyre Jacobum Montagu
‘ Johem Forteſcue Aland & Francum Page unum
‘ eſſe Volumus ſubſcribantur & conſignentur &
‘ ſuperinde eadem judicia ſive final’ decreta pre-
‘ fat’ Cancellar’ noſtro Magnæ Britanniæ preſen-
‘ tentur & libentur Quodq; nulla eorundem
‘ judiciorum ſive final’ decretorum irrotulentur
‘ aut quovis modo execut’ ſint antequam idem
‘ Cancellar’ noſter Magnæ Britanniæ ea manu
‘ ſua propria ſilit’ conſignet Et quod he litere
‘ noſtre paten’ durabunt & permanebunt in ple-
‘ no robore & effectu donec alit’ per al’ literas
‘ noſtras patentes huic Commiſſion’ ſuperſederi
‘ mandat’ foret aut per dictum Cancellar’ no-
‘ ſtrum Magnæ Britanniæ in plena Cur’ determi-
‘ nari decret’ & irrotulat’ erit. *In cujus rei teſti-*
‘ *monium* has literas noſtras fieri fecimus paten-
‘ tentes Teſte meipſo apud Weſtm’ Viceſimo die
‘ Januarij Anno rni’ nri’ Octavo.

Per ipſem Regem

WRIGHTE.

Mr. Serj. *Pengelly.* My Lords, we don't apprehend it neceſſary to read all the others over; we ſhall deliver them in; unleſs it be deſired by the noble Lord. My Lords, we now beg leave to call Mr. *Meller*, who hath executed the Office of a Maſter in Chancery for ſeveral Years. He will give your Lordſhips ſome Account of the Nature and of the Manner of Execution of that Office, in ſupport of what the Commons have charged.

Mr. *John Meller* ſworn.

Mr. *Lutwyche.* My Lords, We deſire Mr. *Meller* may be asked whether he hath executed the Office of a Maſter in Chancery, and how long, and what is the Nature of that Office?

Ld. Ch. Juſt. *King.* Sir, you hear the Queſtion?

Mr. *Meller.* My Lords, according to the beſt of my Remembrance, I was admitted a Maſter the latter End of the Year 1708, and continued ſo till *July*, 1720. The general Nature of the Office is, to digeſt and ſum up thoſe Matters which are ordered upon Hearing to be referred to us, by way of Report: That is the general Buſineſs. There is a further Buſineſs, when Bills of Coſts are to be taxed, they are taxed and adjuſted by us what is to be paid. I don't recollect any more particular Buſineſs.

Mr. *Lutwyche.* I deſire he may be asked, for whoſe Service and Uſe thoſe Reports are made?

Mr. *Meller.* Thoſe Reports are made for the Uſe of the Suitors of the Court. 'Tis to ſtate the Facts that the Lord Chancellor has referred to the Maſter that are too tedious for the Court to look into.

Mr. *Lutwyche.* To whom are they returned and directed?

Mr. *Meller.* Theſe Reports are made to the Court, to the Lord Chancellor, or the Maſter of the Rolls. They have theſe Reports, and make a final Order upon them.

E. of *Macclesfield.* I deſire he may be asked, when Reports of the ſeveral Matters referred to the Maſter to conſider of, which would take up too much Time of the Court to ſettle, are made, whether thoſe Reports of the Maſter are at all concluſive? Or what is the Method in caſe the Parties don't acquieſce?

Mr. *Meller.* My Lords, the Report is only to ſtate the Facts to the Court; and till the Report is confirmed by the Court, what the Maſter hath reported has no Effect. So that I apprehend it is only to lay the State of the Matter before the Court: If what the Maſter reports, ſeems agreeable to the Court, then they confirm it; if not, they vary it, or ſometimes ſend it back again to the Maſter for his further Conſideration.

Mr. *Com. Serjeant.* My Lords, I deſire that Mr. *Meller* may inform your Lordſhips, if any Perſon apprehends the Facts miſtaken, whether they have not an Opportunity of rectifying this Report of the Maſter.

Mr. *Meller.* My Lords, ſo far as I apprehend, the Rule of the Court is this, when a Report is drawn up, the Parties on both Sides have Liberty to object to that Report before the Maſter; and whatever they put in by way of Objection before the Maſter, they may ſpeak to thoſe ſeveral Points when the Report comes before the Court.

Mr. Serj. *Probyn.* What are the Matters that are generally referred to the Maſters by the Court?

Mr. *Meller.* The Chief Matters are the ſtating of Accompts.

Mr

Mr. *Strange*. My Lords, I beg leave to ask the Witneſs this Queſtion. Whether any Matters of Judgment are at any time referred by the Court to the Maſter?

Mr. *Meller*. The Nature of Reports requires ſome Concluſion upon them, to be given by the Maſters according to the beſt of their Opinion. But the Court gives a Sanction to thoſe Reports.

Mr. *Strange*. Whether in any one Inſtance, the Judgment of the Maſter is final to the Suitor?

Mr. *Meller*. I will recollect, and give your Lordſhips the beſt Account that I can remember as to that. I think when a Maſter has taxed a Bill of Coſts, there is a Subpœna taken out for the Coſts upon the Maſter's Report, without going to the Court. I am not ſure.

Mr. *Com. Serjeant*. When Exceptions are taken to a Maſter's Report, doth the Maſter or the Court paſs a Judgment upon them?

Mr. *Meller*. The Method is this, when a Report is drawn up, a Copy is given to both Sides, and each Side puts in ſuch Objections to it as they think proper; the Maſter goes through thoſe Objections, and having gone through them, he forms an Opinion upon the whole. Then it goes to the Court, and the Parties have Liberty to go upon thoſe Objections before the Court, who finally determine.

Mr. *Com. Serj*. I deſire, my Lords, that Mr. *Meller* may acquaint your Lordſhips who preſided in the Court when he came in?

Mr. *Meller*. My Lord *Cowper*, I take it, was then Chancellor; it was in the Year 1708, or the Beginning of 1709.

Mr. *Com. Serj*. We deſire to know, whether he gave any Money when he came into the Office, and to whom?

Mr. *Plummer*. We have called this Gentleman to give an Account of the Nature of the Office of a Maſter in Chancery, we are not come to that Matter of giving of Money; we ſubmit whether it is neceſſary to enter into that Queſtion now?

Mr. Serj. *Probyn*. If this Gentleman is to be called again, we beg Leave to reſerve that Queſtion till they come to that Part of the Charge.

Mr. *Plummer*. My Lords, I have another Queſtion to ask: It has been asked, whether the Determination of a Maſter in Chancery is final? I deſire it may be asked, if the Maſter in Chancery makes a Report, to which there is no Exception, whether the Decree in Chancery is not according to that Report?

Mr. *Meller*. I take it, after the Maſter has made a Report, and there is no Exception to it, that Report is firſt confirmed *niſi*, and then it is confirmed abſolutely upon a ſecond Motion.

Mr. *Lutwyche*. My Lords, I deſire he may be asked another Queſtion: If there be a Reference concerning an Anſwer which is alledged inſufficient, and the Maſter reports it inſufficient, whether it is not final and concluſive, unleſs the Party takes Exception to ſuch Report?

Mr. *Meller*. Unleſs the Party takes Exception, 'tis looked upon as final: For then he ſubmits and puts in a farther Anſwer, and then the End of referring it to the Maſter is anſwered: But the Party may except if he pleaſes.

Mr. *Lutwyche*. As to the taxing of Coſts, whether when the Coſts are taxed to a particular Sum, that is not final and concluſive, unleſs the Party makes Application to the Court?

Mr. *Meller*. I apprehend I did anſwer that before. The Maſter, after he has taxed the Bill of Coſts, the Clerk in Court, as I take it, makes out Subpœnas for Coſts of courſe: But I cannot ſpeak to that ſo well as the Clerks in Court; but I take that to be the Practice.

Earl of *Abingdon*. I would be glad to be informed in this Point: Suppoſing a Sum of Money to be laid out upon a Purchaſe or Mortgage, whether the Titles of thoſe Eſtates are not commonly referred to a Maſter, and whether the Maſter does not judge of or determine thoſe Titles?

Mr. *Meller*. In that Caſe, I can only ſpeak to what came before myſelf. When there was an Order to put Money out upon a Mortgage, the firſt Step I took was, I ſent the Title-Deeds to ſome able Counſel; when I had his Opinion, I uſed the beſt of my Judgment to inform myſelf: If I found no Objection, then I thought I was obliged to allow the Security, and accordingly made my Report of Allowance; and then as Maſter ſet my Hand to the Side of the Deed.

Mr. *Lutwyche*. Another Queſtion I would beg Leave to ask. Tho' it is well known, yet it is fit it ſhould appear from the Witneſs, and that is, Whether the Maſters don't ſit upon the Bench with my Lord Chancellor in open Court in *Weſtminſter-Hall* every Term?

Mr. *Meller*. My Lords, in *Weſtminſter-Hall* three Maſters are required to attend the Chancellor; at his own Houſe two; and the like at the *Rolls*.

Mr. *Com. Serj*. If the Gentlemen have done, we beg Leave to ask one Queſtion: Whether even in the Caſe of Coſts, if the Parties are diſſatisfied, Application is not made to the Court (tho' not by way of Exception, yet by Motion) to refer it back again?

Mr. *Meller*. In the Caſe of Coſts, it hath been a very rare thing to apply to the Court. Some Inſtances there have been, I believe, but few.

Mr. *Com. Serj*. I beg Leave the Maſter would inform your Lordſhips, whether in the Caſe of Titles, if there happens any Difference in the Opinion of the Parties, whether they apply to the Court, or are concluded by the Opinion of the Maſter?

Mr. *Meller*. I never knew, during the Time that I was in the Office, that any Title was ever conteſted before the Court; I mean in my own Caſe.

Mr. *Com. Serj*. Whether or no he knows any Caſe where the Parties have differ'd in Opinion about a Title, that the Maſter's Opinion has concluded the Parties?

Mr. *Meller*, I don't know, while I was in the Office, that there was ever any Objection before me in the Caſe of a Title.

Mr. *Robins*. Give me Leave to ask one Queſtion: You ſay three Maſters ſit with my Lord Chancellor at *Weſtminſter*, two at his own Houſe: I deſire to know what they do there, whether they ſit as Aſſiſtants?

Mr. *Meller*. My Lords, I don't know that ever their Advice was asked.

Dr. *Sayer.* My Lords, I would ask whether they ever interpoſed by way of Judgment, or took upon them to act as Judges?

Mr. *Meller.* My Lords, I think not, I don't remember any Inſtance of it.

Mr. *Strange.* My Lords, I deſire he may be asked, whether what the Maſter ever does is confirmed of courſe, or is there not a Motion for that purpoſe?

Mr. *Meller.* I thought I mentioned that before: I ſhall repeat it again. There is firſt a Motion to confirm *niſi Cauſa*; and upon the ſecond Motion, unleſs there is Cauſe ſhewn, it is confirmed.

Mr. *Strange.* My Lords, I deſire he may be asked, if there is not an Affidavit of Service of the firſt Order?

Mr. *Meller.* I believe there is; but that is the Buſineſs of the Sollicitor.

Mr. *Strange.* My Lords, I beg Leave he may be asked one Queſtion more, Whether there is not a Certificate alſo from the Regiſter that no Cauſe is ſhewn?

Mr *Meller.* My Lords, I can't ſpeak particularly as to that; It is a Buſineſs that does not lie before the Maſter in his Office: I believe in many Caſes the Regiſter certifies.

Dr. *Sayer.* We will trouble your Lordſhips with no more Queſtions except this one; that is, Whether we ſhall ſee Mr. *Meller* again? For if we are to take our Leave of him now, we ſhould offer ſome other Queſtions before he departs.

Mr. Serj. *Pengelly.* My Lords, I can't tell whether the Managers will have any Occaſion to call him again; but he ſhall ſtay here to attend, in order to be called when he is wanted, either by the Noble Lord or any other Perſon. We don't think fit to trouble your Lordſhips with any other Evidence as to that Matter. Their Authority in Court appears by the Commiſſions that have been produced. It is not ſaid in the Introduction to the Articles, that the Maſters are to comptroll the Lord Chancellor, but to aſſiſt him in the Adminiſtration and Execution of Juſtice, of which we think we have produced the fulleſt Proof; and beg Leave to proceed to another Part of our Evidence, that which relates to the Profits of the Office of Lord Chancellor. The ordinary Profits, not to mention the extraordinary ones, which have been made by the Noble Lord within the Bar, I think may be computed to amount to 8000 *l.* a Year, or thereabouts; ſo that there is no Occaſion to uſe other Means. But not to enter into them all, we ſhall only beg Leave to call one Witneſs to prove one groſs annual Sum of 1500 *l.* a Year paid out of the *Hanaper-Office.* My Lords, we deſire Mr. *Pynſent* may be asked, for what annual Sum he accompted to the late Lord Chancellor out of the *Hanaper-Office*, during his time of being in the ſaid Office, how much he has paid him?

Mr. *Com. Serj.* My Lords, I beg Leave to oppoſe that Queſtion. I believe there is no Payment from the Crown but what is always upon Record; and therefore that being a Matter of a higher Nature, they ought to produce thoſe Records, and not examine Witneſſes *viva voce* to it.

E. of *Macclesfield.* I believe this Gentleman is right in his Objection in Point of Law. But however, as this Perſon is the proper Officer, and I believe an honeſt Man, I will not inſiſt upon the Nicety.

Mr. Serj. *Pengelly.* We deſire to know how much a Year he has paid to the impeached Lord out of the *Hanaper-Office?*

Mr. *Pynſent.* I have no Voucher with me; but as far as I can charge my Memory, 'tis about 13 or 1400 *l.* a Year.

E. of *Macclesfield.* If he had had his Memorandum with him, I was willing he ſhould give your Lordſhips an Account of that Matter; but if he ſpeaks only by an uncertain Memory of it, I hope I ſhall not be bound by it, eſpecially when he himſelf aſſigns the Want of his Vouchers as a Reaſon why he cannot be certain.

Mr. Serj. *Pengelly.* My Lords, we deſire he may be asked, How much he can take upon him to ſay he has paid? It is not material whether by Warrant or Special Direction: It is only a Queſtion of Fact, whether he can be certain to a Sum, either 13 or 1400 *l.* a Year, or other Sum?

Mr *Pynſent.* I can ſay above 1000 *l.* a Year. If I had my Vouchers here, I could be more certain.

Mr *Com. Serj.* The Noble Lord waved the Objection, upon a Suppoſition that he had a certain Account. As he has not, I muſt beg Leave to inſiſt upon the Objection that I made againſt the Legality of the Proof.

Mr. *Lutwyche.* We only ask in this Caſe to a Fact, what he paid to him; and I will add this further, for what time?

Mr Serj. *Probyn.* My Lords, we muſt inſiſt upon our Objection. The Witneſs ſays he is uncertain how much he has paid: He ſays he has Vouchers which will ſhew the particular Sums he has paid; and ſince it is in their Power to produce thoſe Vouchers, we muſt ſubmit it that they ſhall produce the beſt Evidence they have in their Power to give, and that the Receipts and Vouchers ſhall be produced.

Mr *Com. Serj.* The Anſwer of the Honourable Managers to the Objection, is no Anſwer. They ſay 'tis a Matter of Fact; but that Matter of Fact is Matter of Record: It muſt be proved by the Record, becauſe the Law expects the higheſt Proof to be made that can be, even in trifling Caſes, and much more when the Honour of ſo great a Lord is in queſtion.

Mr Serj. *Probyn.* I deſire to know if there is not conſtantly a Receipt given upon every Payment?

Mr *Pynſent.* Yes, and thoſe Receipts are carried into the Auditors Office, and there they reſt.

Mr Serj. *Probyn.* Then they can be come at?

Mr *Pynſent.* Yes, they are carried in yearly.

Mr *Sol. General.* My Lords, I did not expect this Objection: But we muſt ſubmit it whether there is any Foundation for it. If the Matter of Record be inſiſted on, only with reſpect to the Receipt given, there is no need of it: Better Evidence cannot be given to prove Payment, than the Man who paid it. The common Evidence to prove Payment of Money, is to pro-

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duce a Man to ſwear that he paid that Money. No better Evidence can be given; and tho' a Receipt is given, yet when a Perſon proves he paid the Money, he need not produce the Receipt: It is better Evidence than the Receipt: A Receipt may be given without Payment. Therefore we apprehend that the Witneſs's Proof of the Payment, is ſufficient to prove this Matter of Fact.

Mr. *Com. Serj.* I apprehend there is no Money either received or iſſued out by the Crown, but what appears by Record. It is not only thoſe Receipts that is the Strength of the Objection; but when there are Matters uncertain, and the Witneſs ſays he can't declare what it was, whether upon that Foundation your Lordſhips won't expect a certain Evidence, not only from the Nature of the Thing, but from the preſent Circumſtances of this Caſe, when the Witneſs declares that he cannot remember it?

Mr *Strange.* My Lords, I wonder to hear it ſaid, that a Perſon who ſwears to the Payment of Money, is the moſt certain Evidence. He may be miſtaken, the Receipt cannot. Therefore we muſt ſubmit it, as they have opened it, whether this is the beſt Evidence?

Mr *Lutwyche.* My Lords, I wonder your Lordſhips ſhould be troubled with any thing of this kind, in order to prove a Salary of 1500 *l.* a Year belonging to the Noble Lord's Office, when we ask only to the Quantum of the Sum which he did receive from Mr. *Pynſent*: The Queſtion is, whether we ſhall be admitted to ask that Queſtion? It is admitted that the Witneſs paid the Salary: All the Queſtion is, what he paid?

E. of *Macclesfield.* My Lords, I am ſorry your Lordſhips Time ſhould be taken up about a thing of this kind. When the Objection was firſt made by my Counſel, which I apprehend is right, I ſtood up to acquaint your Lordſhips, that I did not inſiſt on the Nicety of it. This Gentleman uſed to pay me Money, and I believe he is a very honeſt Gentleman; but when he comes to ſay he is not ſure how much, and they were working him up to a higher Pitch, and theſe Gentlemen, for ought I know, or their Sollicitor, may have the Receipts in their Pockets, I thought it was then high time to ſtop them. This Gentleman did ſay it was more than 1000 *l.* My Lords, I admit it, I believe it to be 1100 *l.* a Year, or thereabouts: If I knew exactly, I would tell it, I never intended to diſpute the Matter.

Mr *Weſt.* I would not have your Lordſhips imagine that the Commons are capable of working up a Witneſs. It is unworthy of the Commons of *Great Britain*, of the Gentlemen appointed Managers in their Behalf; it is impoſſible that they ſhould have any View but the Truth of the Fact, and the Juſtice of the Cauſe. The Queſtion asked was only what it was he paid; it was not endeavouring to work him up to any thing. If this was a Queſtion relating to the Crimes charged upon his Lordſhip, I ſhould not have been ſo much ſurprized; but this is only an Aggravation contained in the Preamble. I think the litigating the Point is as great an Aggravation, as the proving the Payment of the Money.

E. of *Macclesfield.* My Lords, I did not intend any Reflection upon the Commons; nor did I ſay any thing which amounts to it. I did ſay the Sollicitor might have the Receipts, I don't know what they have in their Hands. The learned Gentleman that ſpoke laſt, ſays 'tis not a Charge, only an Aggravation: If it be an Aggravation, ſhould it not be proved, and legally proved? But I have been ready to make this Matter eaſy, for I agreed it to be as much as their own Witneſs can with any Certainty ſay it was, and I don't think it to be any Aggravation; and therefore told your Lordſhips I *believed* it might be 1100 *l.* a Year, or thereabouts, not being willing to take up any more of your Lordſhips time about it.

Mr. Serj. *Pengelly.* My Lords, the Managers for the Houſe of Commons do not think it ſo material whether it be 11 or 1500 *l.* a Year. We will take the Noble Lord's Admiſſion: And we apprehend as it is 1100 *l.* a Year, it is a reaſonable Addition to the Salary of his Office.

E. of *Macclesfield.* I only would ask this Queſtion, Do you remember what the Chancellor's Annual Salary is?

Mr. *Pynſent.* No, I do not.

E. of *Macclesfield.* That is Part of the Particular that makes up the 1100 *l. per Annum?*

Mr. *Pynſent.* I think it is ſo.

E. of *Macclesfield.* Is it not 300 *l. per Annum?*

Mr *Pynſent.* I think it is thereabouts.

Mr *Com. Serj.* My Lords, I deſire he may be asked, whether or no this 1100 *l.* a Year hath been uſually allowed to the preceding Lords Chancellors?

Mr *Pynſent.* I take it for granted that it was ſo.

Mr Serj. *Pengelly.* My Lords, we ſhall now proceed to call our Witneſſes in Support of the Ninth Article, that being a diſtinct Particular, relating to a Sum not at all involved in the Queſtions touching the Maſters; and, as we apprehend, received by the Noble Earl under Circumſtances of the greateſt Aggravation that is poſſible; abuſing the Royal Authority, or that Share of it which the Noble Lord enjoyed at that time when he was one of the Lords Juſtices. Therefore we give Preference to that Article, and deſire Mr. *Thomas Bennet*, whom I ſee in your Lordſhips Houſe, may be ſworn and examined.

Mr. *Thomas Bennet* ſworn.

Mr Serj. *Pengelly.* My Lords, Mr. *Bennet* was the Perſon who was poſſeſſed of the Office of the Clerk of the Cuſtodies, at the time of the Reſignation of it for the Benefit of Mr. *Hamerſley*, who has now a Patent. We have the Patent here; and if that be read, it will more fully acquaint your Lordſhips with the Nature of the Office, and then we ſhall acquaint your Lordſhips with the Nature of the Tranſaction.

The Patent begun to be read.

'Teſte, *&c.* 5to Septemb' An. 10 *Georgii* Regis.

Mr Serj. *Pengelly.* Tho' the Noble Lord's Name be not mentioned in the Patent, yet it is ſufficiently known from the Date and Time

of

of it, that it was when the Noble Lord was one of the Lords Juſtices, and had the Cuſtody of the Seals, and that at that time he affixed the Seals to this Patent.

Then the Patent was begun again to be read.

E. of *Macclesfield*. My Lords, I beg Pardon for interrupting, I don't know whether they think it of any particular Uſe to read it through; if not, for ſaving your Lordſhips time, I admit that a Grant was made of the Office to Mr. *Hamerſley*, on the Surrender of Mr. *Bennet*.

Mr Serj. *Pengelly*. My Lords, as it is neceſſary to ſhew the Reſignation of Mr. *Thomas Bennet*, ſo likewiſe the Nature of the Office; and therefore to the end that may be the better ſeen, we beg Leave the Patent may be read.

Clerk reads.

'GEORGIUS Dei Gratia, Magnæ Britanniæ, Franciæ & Hiberniæ Rex, Fidei Defenſor, &c. Omnibus ad quos preſentes literæ noſtræ pervenerint ſalutem. Cum nos per Literas noſtras Patentes ſub Magno Sigillo noſtro Magnæ Britanniæ confectas geren' dat' apud Weſtm' viceſimo die Martij, Anno Regni noſtri tertio pro nobis Heredibus & Succeſſoribus noſtris Dederimus & Conceſſerimus Dilecto & fideli noſtro Thomæ Bennet Armigero Officium Clerici ad Scribend' & Conficiend' omnia & ſingula Bria de diem clauſit extremum, & Mandamus & Commiſſiones ad inquirend' poſt mortem & de Ideotis & Lunaticis & ad melius inquirend' inde & ſuperſed' eorundem ac omnia al' Bria & Proceſs' eorund' ac omnia al' Bria de Proceſs' cujuſcunque Generis Nominis Naturæ vel Speciei eſſent vel forent que ante tum de vel nuper in Cur' Wardor' & Libationum aliquor' Predeceſſor' noſtror' antetunc Regum vel Reginar' Angl' per Warrant' ibidem dum eadm' Cur' ſtetit & fuit in Uſu & Vigore fact' & Conceſs' aſſignat' vel appunctuat' fuerant, vel fieri concedi aſſignari vel appunctuari conſuerant vel debuerant ac de vel in Cur' noſtra Cancellar' vel aliquor' Predeceſſor' noſtror' antetunc Regum vel Reginarum Angl' ſub Magno Sigillo Angl' impetrat' & perſecut' fuerant vel impetrari & proſequi conſueverant vel debuerant ac oies & ſingul' Literas Paten' de Cuſtod' Corporum omnium Wardor' Idiotor' & Lunaticor' noſtror' Hered' & Succeſſor' noſtrorum & de Maritag' eorund' Wardor' ſub Magno Sigillo Magnæ Britanniæ impetrand' & proſequend' necnon omnia al' Bria Commiſſiones & proceſs' cujuſcunque Generis Nominis Naturæ vel Speciei eſſent vel forent de vel in Cur' noſtra Cancellar' Hæred' & Succeſſor' noſtrorum ſub magno Sigillo nro Magnæ Britanniæ Heredu' vel Succeſſorum noſtrorum premiſſa predicta ſeu eorum aliqua tangen' vel concernen' fiend' concedend' impetrand' ſeu proſequend' HABEND' tenend' gaudend' & exercend' predictum Officium & omnia & ſingula premiſſa predicta ſuperius ſpecificat' prefat' Thomæ Bennett per ſeipſum vel per ſufficientem Deputat' ſuum ſive Deputatos ſuos ſufficientes a die dat' prerecitat' Literarum noſtrarum Patentium ad Termin' & pro Termino vitæ naturalis ipſius Thomæ Bennett una cum omnibus predict' profic' & advantag' ad inde ſpectan' prout per eaſdem Literas Paten' (inter al') in eiſdem content' relatione inde habita plenius liquet & apparet cumque præfat' Thomas Bennett per quoddam Scriptum ſuum ſub Manu & Sigillo ſuis ſigillat' geren' Dat' nono die Auguſti, Anno Regni noſtri decimo, ac in Cur' Cancellar' noſtra debito modo Irrotlat' Officium & premiſſa predicta ac tot' ſtatum jus Titulum & intereſſe ſua in eiſdem una cum dictis recita' Literis noſtris Patentibus Cancelland' in Manus noſtras ſurſum reddiderit. *Quam* quidem ſurſum redditionem nos acceptavimus ac per preſentes acceptamus *Sciatis modo* quod nos de Gratia noſtra ſpeciali ac ex certa Scientia & mero motu noſtris *Dedimus* & conceſſimus ac per preſentes pro nobis Heredibus & Succeſſoribus noſtris *Damus* & concedimus dilecto & fideli noſtro Hugoni Hamerſley de Interiori Templo Londin' Armigero dictum Officium Clerici ad ſcribend' & conficiend' omnia & ſingula Bria de diem clauſit extremum & Mandamus & Commiſſiones ad inquirend' poſt mortem & de Idiotis & Lunaticis & ad melius inquirend' inde & ſuperſed' eorund' ac omnia al' Bria & Proceſs' eorund' ac omnia al' Bria & Proceſs' cujuſcunque Generis Nominis Naturæ vel Speciei ſint vel fuerint quæ antehac de vel nuper in Cur' Wardorum & Liberationum aliquorum Predeceſſorum noſtrorum nuper Regum vel Reginarum Angl' per Warrant' ibidem dum eadem Cur' ſtetit & fuit in Uſu & Vigore fact' conceſs' aſſignat' vel appunctuat' fuerunt vel fieri concedi aſſignari vel appunctuari conſueverunt vel debuerunt ac de vel in Cur' noſtra Cancellar' vel aliquorum Predeceſſorum noſtrorum nuper Regum vel Reginarum Angl' ſub Magno Sigillo Angl' impetrat' & proſecut' fuerunt vel impetrari & proſequi conſueverunt vel debuerunt ac omnes & ſingul' Literas Paten' de Cuſtodia Corporum omnium Wardorum Idiotorum & Lunaticorum noſtrorum Hæred' & Succeſſor' noſtrorum & de Maritag' eorund' Wardor' ſub Magno Sigillo Magnæ Britanniæ impetrand' & proſequend' necnon omnia al' Bria Commiſſiones & proceſs' cujuſcunque Generis nomis Naturæ vel Speciei ſint vel fuerint de vel in Cur' noſtra Cancellar' Heredum & Succeſſorum noſtrorum ſub Magno Sigillo noſtro Magnæ Britanniæ Hered' vel Succeſſorum noſtrorum premiſſa predicta ſeu eorum aliqua tangen' vel concernen' fiend' concedend' impetrand' ſeu proſequend' ac ipſum Hugonem Hamerſley Clericum & Officiarium noſtrum Hered' & Succeſſor' noſtrorum ad ſcribend' & conficiend' omnia & ſingula predicta Bria Commiſſiones proceſs' ſuperſed' Literas Paten' ac omnia & ſingula cætera premiſſa ſuperius ſpecificat' de vel in dict' Cur' Cancellar' noſtra ac Hered' & Succeſſor' noſtror' impoſterum de tempore in tempus concedend' proſequend' ſeu quoviſmodo impetrand' *Ordinamus*, *Conſtituimus*, *Erigimus* & Stabilimus per preſentes *Habend' Tenend' Utend' Gaudend' Exercend' Fungend'* & Adminiſtrand' predict' Offic' & omnia & ſingula premiſſa predicta ſuperius ſpecificat' prefat' Hugoni Hamerſley per ſeipſum vel per ſufficientem Deputatum ſuum ſive Deputatos ſuos ſufficientes a confectione harum literarum noſtrarum Patent' ad Terminum & pro Termino Vitæ naturalis ipſius Hugonis Hamerſley una cum omnibus & ſingulis Feod' profic' commoditat' emolument' ju-

' ribus

'ribus Privileg' & al' rebus quibuſcunque modo 'vel antehac uſitat' pro premiſſa vel eorum aliqua 'recept' ſeu eiſdem vel eorum alicui pertinen' in'ciden' vel incumben' quoviſmodo adeo plene li'bere & integre ac in tam amplis modo & forma 'prout prefat' Thomas Bennett, vel aliquis alius 'ſive aliqui alii predictum Officium & cætera pre'miſſa ſeu eorum aliqu' antehac habentes vel 'exercentes habens ſeu exercens habuerunt ex'ercuerunt perceperunt & gaviſi fuerunt habuit 'exercuit percepit & gaviſus fuit aut habere exer'cere percipere aut gaudere debuerunt aut de'buit in & pro Exercitio ejuſdem Officii & cæ'terorum premiſſorum. Et hoc abſque computo 'ſeu aliquo alio proinde nobis Heredibus vel 'Succeſſoribus noſtris reddend' ſolvend' vel fa'ciend' *Volumus* etiam ac per preſentes pro no'bis Heredibus & Succeſſoribus noſtris concedi'mus prefat' Hugoni Hamerſley quod ipſe cu'ſtodiet intrabit & tranſcribet omnes & ſingulos 'Ordines Reportationes & comput' fact' declara'rat' & perfect' ſive faciend' declarand' & perfi'ciend' tangen' vel concernen' dict' Idiot' vel Lu'natic' & ſtat' eorund' vel eorum aliquorum vel 'alicujus *Volumus* etiam quod nullus alius Cleri'cus Cancellariæ noſtræ Hered' vel Succeſſor' 'noſtror' nec aliquis alius ſive aliqui alii cum 'Scriptur' Confectione ſeu Compoſitione pre'dictorum Briorum Commiſſion' proceſs' Lite'rarum Paten' vel cum Cuſtodia Intracone & 'Tranſcriptione predict' Ordin' Reportation' & 'computorum aut al' premiſſorum aut alicujus 'eorundem ullo modo ſe intromittat ſeu intro'mittant ſine aſſenſu & conſenſu ipſius Hugonis 'Hamerſley. Et quod idem Hugo Hamerſley 'aut Deputat' ſuus ſive Deputat' ſui ſufficien' in 'hac parte aſſignat' ſive aſſignand' Omnia & 'ſingula predicta Bria Commiſſiones Literas 'Paten' Ordinationes Certification' Compoſition' '& cætera premiſſa de vel in dict' Cur' Cancel'lar' noſtra ac Heredum & Succeſſorum noſtro'rum proſequend' conficiend' impetrand' cuſto'diend' intrand' vel tranſcribend' ſcribere con'ficere cuſtodire intrare & tranſcribere poſſint '& quilibet eorum poſſit. *In cujus* rei Teſtimo'nium has Literas noſtras fieri fecimus Patentes 'Teſtibus Willielmo Archiepiſcopo Cantuar' & 'cæteris Cuſtodibus & Juſticiariis Regni noſtri 'apud Weſtmonaſterium quinto Die Septembris, 'Anno Regni noſtri Decimo.

Per bre' de privato Sigillo,

COCKS.

Mr. Serj. *Pengelly.* The Reading of theſe Letters Patents ſhews, that this Office is in the Gift of the Crown: It likewiſe ſhews, that the Reſignation of Mr. *Tho. Bennet* was for the Benefit of Mr. *Hamerſley*, for that is recited in the Letters Patents themſelves. Now, my Lords, we ſhall ſhew your Lordſhips upon what Conſideration or Bargain that Reſignation and new Grant were made.

Mr. *Com. Serj.* I beg Leave to make an Objection to that: The Foundation of this Article is a corrupt Agreement for the Reſignation of an Office accepted by the Lord Chancellor. Now, in the Letters Patents in general, a Reſignation is taken Notice of; but they ought to make it appear, That his Lordſhip's Permiſſion or Acceptance of it is neceſſary. The Reſignation is not made to the Lord Chancellor: Therefore we hope it ſhall not, by way of Concluſion and Implication, be an Evidence to prove this Reſignation to be accepted or procured by him. The Reſignation was in fact made without his Privity; and the Reſignation itſelf is of Record, and muſt be proved by Record.

Mr. *Sol. Gen.* My Lords, I can hardly think myſelf at your Lordſhips Bar, by the Objections which are made by the Counſel for the noble Lord. They object before they hear us: They object we cannot prove the Reſignation to the Earl: When we have produced our Proof, then they will ſee whether it be ſufficient: 'Tis time enough for them to make the Objection then. If we are to be objected to upon every Witneſs we call, before we have asked them one Queſtion, I am afraid a great deal more Trouble will be given your Lordſhips than we are willing to give. We are firſt to ask our Queſtions; if we ask an improper Queſtion, they may object to the Queſtion: Or, if the Anſwer don't prove our Charge, they may obſerve on it when it is given. I little expected this Method at your Lordſhips Bar.

Lords. Go on, go on.

Mr Serj. *Pengelly.* We don't apprehend there is any Occaſion to enter into this Objection. It is a Reſignation to the Crown, but through the Hands of the Lord Chancellor: He is the Lord that puts the Seal to the Inſtrument: But if further Evidence be neceſſary, they muſt object to that when we have gone through the Proof. Therefore we beg Leave to ask Mr. *Tho. Bennet.*

Mr. *Lutwyche.* I thought they would have objected to our asking Mr. *Bennet* any Queſtions at all.

Mr. *Onſlow.* It is rather an Obſervation upon our Evidence, which will be more proper for them when they come to make the noble Lord's Defence.

Mr. Serj. *Pengelly.* We beg Leave to ask Mr. *Bennet*, what Application he made for Liberty to reſign this Office, and for Mr. *Hammerſley* to be admitted?

Mr. *Tho. Bennet.* My Lords, as ſoon as I was admitted a Maſter of the Court of Chancery, which was the 3d of *June*, 1723, I thought it inconſiſtent to hold this Office of the Clerk of the Cuſtodies, which I had before; and therefore I intended to ſurrender it to ſome Perſon that was proper: And after I had found Mr. *Hamerſley*, and made an Agreement with him, I applied to Mr. *Cottingham*, then Secretary to my Lord Chancellor. I told him I was poſſeſſed of an Office in the Gift of the Crown, and was willing to ſurrender, and was going to apply to a Secretary of State to get the King's Leave to ſurrender for the Benefit of Mr. *Hamerſley*. I told him that the Office being in the Court of Chancery, the Secretary of State would naturally ask my Lord Chancellor, whether the Perſon I propoſed was well-affected to the Government, and qualified for the Place: And therefore, for that Reaſon, I thought it my Duty to acquaint my Lord Chancellor with my Intention, and who the Perſon was I intended to ſucceed me. I deſired Mr. *Cottingham* to acquaint my Lord Chancellor that Mr. *Hamerſley* was the Perſon. Mr. *Cottingham* replied, he would acquaint my Lord Chancellor, and I ſhould have an Anſwer as ſoon as poſſible. He appointed me to meet him the next Day, when he told me he had acquainted my Lord Chancellor

who the Perſon was, and that my Lord Chancellor ſaid he had not any Knowledge of him. I told Mr. *Cottingham* he might have acquainted his Lordſhip that he knew him, for he lived the next Door to him: He is a Gentleman at the Bar well known; and I do aſſure you he is in the Intereſt of the Government. Says Mr. *Cottingham*, my Lord Chancellor don't know him, nor do I. I was ſurprized at that. But however, ſaid he, Mr. *Bennet*, there is a Preſent expected by my Lord Chancellor, and if I made that Preſent, the thing might be made eaſy, and my Lord Chancellor would do what I deſired; that is, to acquaint the Secretary of State, that Mr. *Hamerſley* was a Perſon well affected to the Government; and that I deſired he might ſucceed me in my Place. Mr. *Cottingham* ſaid, there muſt be a Preſent. On this, I told Mr. *Cottingham*, that it was not uſual to give any Preſent upon this Occaſion; that, in my own Caſe, when I came in, I gave none to my Lord *Cowper*, and my Brother told me that he gave none; and that at his Coming in, he asked Lord *Cowper* if any thing was due to him, and my Lord *Cowper* denied that any thing was due, and abſolutely refuſed any thing: Beſides, ſaid I, it is very hard for my Lord Chancellor to ask or accept any thing from me, becauſe I ſo lately paid him ſo great a Sum as Fifteen hundred Guineas for my Maſter's Place; but if he will have it, I will give him One hundred Guineas. He ſaid he would acquaint my Lord Chancellor with it; and the next day, or the day after, he told me that my Lord Chancellor would accept of that; but it was a very ſmall Preſent, and it was a Favour my Lord accepted it; and my Lord would ſend over to *Hanover* for the King's Warrant, and I need have no further Trouble beſides paſſing the Patent.

Mr. Serj. *Pengelly*. My Lords, I deſire he may be asked, whether he paid the One hundred Guineas to Mr. *Cottingham*, and in what manner?

Mr. *Tho. Bennet*. I did pay it, I think it was in a Bank Bill of 105 *l.*

Mr. Serj. *Pengelly*. Do you remember at what time?

Mr. *Tho. Bennet*. It was long before the Reſignation: For ſome conſiderable time after, Mr. *Cottingham* asked me what I meant that I did not paſs the Patent, for the Warrant was come over. I ſaid I had employ'd Mr. *Tench* to do it; but however I would ſpeak to him again; which accordingly I did, and Mr. *Tench* paſſed the Patent, and I paid him 64 *l.* 17 *s.* 0 *d.* the Fees for paſſing the Patent.

Mr. Serj. *Pengelly*. Was that over and above the One hundred Guineas?

Mr. *Tho. Bennet*. Yes, my Lords.

Mr. Serj. *Pengelly*. Was there any Deduction upon the Payment of the One hundred Guineas?

Mr. *Tho. Bennet*. None at all.

Mr. *Lutwyche*. My Lords, I deſire he may be asked, how long this was after he was admitted a Maſter in Chancery?

Mr. *Tho. Bennet*. I believe it was about ſix Weeks. I was admitted a Maſter in Chancery the Beginning of *June*, and the latter End of *July* following, I ſurrender'd my Office of Clerk of the Cuſtodies.

Mr. Serj. *Pengelly*. We have done with Mr. *Bennet*.

Mr. Serj. *Probyn*. If the Gentlemen have done with him, we beg that he may be asked a few Queſtions on behalf of my Lord *Macclesfield*. What was it you deſired Mr. *Cottingham* to ſay in your Favour to my Lord *Macclesfield*?

Mr. *Tho. Bennet*. I deſired Mr. *Cottingham* to acquaint my Lord Chancellor, that I intended to apply myſelf to the Secretary of State for Leave to ſurrender the Place of Clerk of the Cuſtodies, and to beg the Favour, that if the Secretary of State ſhould enquire of him after the Abilities and Circumſtances of Mr. *Hamerſley*, he might aſſure the Secretary of State, that he was a Man qualified for the Place, and well affected to the Government.

Mr. Serj. *Probyn*. Was that all?

Mr. *Tho. Bennet*. I think that was all.

Mr. Serj. *Probyn*. Was that all that Mr. *Cottingham* told you he had asked?

Mr. *Tho. Bennet*. I don't remember any thing more, but only Mr. *Cottingham* returned for Anſwer, my Lord did not know Mr. *Hamerſley*, and I muſt make a Preſent, and then what I deſired would be complied with.

Mr. Serj. *Probyn*. I think you ſay you had ſome Treaty with Mr. *Hamerſley* about the Surrender of your Office?

Mr. *Tho. Bennet*. Yes.

Mr. Serj. *Probyn*. Had you come to any Agreement with him for the Office, if you could procure a Surrender and Admittance?

Mr. *Tho. Bennet*. Yes.

Mr. Serj. *Probyn*. Then I deſire to know what Sum of Money he was to pay you for that Office, if you could procure him to be recommended?

Mr. Serj. *Pengelly*. We hope the Counſel will not ask ſuch a Queſtion.

Mr. *Sol. Gen.* It is not ſo proper for us to object: The Objection is to come from him: We may tell him that he is not bound to anſwer ſuch a Queſtion, unleſs he pleaſes.

Mr. *Tho. Bennet*. I deſire to be excuſed anſwering a Queſtion that is not material on one Side or the other.

Mr. Serj. *Probyn*. I hope it will be thought reaſonable, that he ſhould inform your Lordſhips, what was the Conſideration that induced him to ſurrender his Office, or what Money he was to have?

Mr. *Tho. Bennet*. I might have ſurrendered that Office without receiving any Money for it; whether I gave it, or whether I ſold it away, is not material.

Mr. *Strange*. I deſire to know whether he gave it away.

Mr. *Weſt*. The Queſtion is only to induce him to accuſe himſelf of a Fact which may be prejudicial to him, and it hath no Influence on the Queſtion before your Lordſhips; which is not, whether this Gentleman had a Right to give away or ſell his Office, but whether the Earl of *Macclesfield* corruptly took Money.

Mr. *Sol. Gen.* It is our Duty that he ſhould not be ſurprized into a Queſtion that may ſubject him to Puniſhment: It is not properly an Objection from us; but we ought to let him know, that an Anſwer to the Queſtion may ſubject him to a Proſecution. If he thinks fit to anſwer, we have nothing to ſay to it.

Mr. *Plummer*. I have another Objection to the putting of this Queſtion. I perceive the Counſel intend to draw out this Tryal to an exceſſive Length; I hope your Lordſhips, for your own Sakes,

Sakes, will not permit this Queſtion to be anſwered?

Earl of *Abingdon.* If this Point be inſiſted on on both Sides, it cannot be avoided but they muſt withdraw: But I hope the Counſel for the noble Lord will conſider very well of it, before they give your Lordſhips or the Managers that Trouble: For if your Lordſhips ſhould judge the Queſtion unreaſonable, it would throw a Diſgrace upon themſelves, and be at leaſt of no Service to the noble Lord that is impeached.

E. of *Macclesfield.* I humbly apprehend this Queſtion to be extremely material, as that Circumſtance of his having made this Preſent of One hundred Guineas out of Two thouſand, perhaps, which he received for ſurrendring the Place, muſt ſet this matter in a different Light than it would appear in, if nothing elſe had been done but the bare paying of the One hundred Guineas; but ſince I perceive it to be your Lordſhips Senſe that he ſhould not be asked the Queſtion, I therefore decline inſiſting on it.

Dr. *Sayer.* My Lords, I beg Leave to ask Mr. *Bennet* this Queſtion: He was pleaſed to ſay that he gave a Hundred Guineas. Now I deſire it may be asked of him, Whether he gave it to permit him to reſign, or to give a Recommendation of Mr. *Hamerſley*, or what elſe. That he would pleaſe to explain it, what it was given for.

Mr. *Tho. Bennet.* I have ſaid it twice; but I will repeat it again. I ſaid that it was that my Lord Chancellor might recommend the Perſon to the Secretary of State; for I apprehended it was not in my Lord's Power or Gift: He might have done it without taking any Money.

Dr. *Sayer.* With regard to this 64 *l.* odd Money, what was that paid for? Whether to the Great Seal only, or for the whole Fees in paſſing the Patent through all the Offices?

Mr. *Tho. Bennet.* It was paid to Mr. *Tench* the Clerk of the Patents, who paſſed this Patent through all the Offices; and the Great Seal was included in it as I apprehend.

Dr. *Sayer.* I ask who this Mr. *Tench* is, whether he is an Officer belonging to the Great Seal, under the Lord Chancellor?

Mr. *Tho. Bennet.* He is Clerk of the Patents; I do not know who he belongs to.

Mr. *Robins.* My Lords, I deſire he may be asked, Whether Mr. *Cottingham* told him, that the Lord *Macclesfield* inſiſted upon any particular Sum?

Mr. *Tho. Bennet.* Mr. *Cottingham* told me, that my Lord inſiſted upon One hundred Guineas; and I argued the Unreaſonableneſs and Hardſhip of it.

Mr. *Com. Serj.* My Lords, I deſire Mr. *Bennet* may acquaint your Lordſhips, whether ever he made any Application to the noble Lord for Permiſſion to reſign?

Mr. *Tho. Bennet.* I never ſpoke to my Lord myſelf.

Mr. Serj. *Pengelly.* If the Gentlemen have done with him, we beg Leave to explain this Matter, and to ask him upon what Account it was that Mr. *Cottingham* from my Lord *Macclesfield* ſaid a Preſent was expected?

Mr. *Tho. Bennet.* I can't ſay what was Mr. *Cottingham*'s Reaſon; but he ſaid my Lord Chancellor did not know Mr. *Hamerſley*; and then he went on, and ſaid, a Preſent was expected. I apprehended, Mr. *Cottingham* took it, that I could not do it without my Lord Chancellor's Conſent.

Mr. Serj. *Pengelly.* I deſire he may be asked, Whether the Hundred Guineas was paid for a Recommendation of Mr. *Hamerſley*, or that the Whole of procuring the Warrant for the Patent was to be done for it?

Mr. *Tho. Bennet.* Mr. *Cottingham* aſſured me, I need have no farther Trouble about it, if I would pay the Hundred Guineas: He would get the King's Warrant; and I ſhould have no farther Trouble, but paſſing the Patent.

Mr. Serj. *Pengelly.* My Lords, I deſire he may be asked, whether he depended upon theſe Aſſurances, or whether he made Application to any body elſe?

Mr. *Tho. Bennet.* I never made any other Application; and I told Mr. *Cottingham*, if any Accident happen'd of Death, *&c.* before the Warrant came over, I hoped my Lord Chancellor would return the Hundred Guineas; and he ſaid, Surely ſo.

Mr. Serj. *Pengelly.* I beg Leave to obſerve, that the Patent proves that this corrupt Bargain was executed.

Mr. *Lutwyche.* I deſire he may be asked, whether Mr. *Cottingham* delivered to him the Sign-Manual, or whether Mr. *Cottingham* got the Patent paſſed?

Mr. *Tho. Bennet.* I never ſaw the Sign-Manual. He delivered it, as I believe, to Mr. *Tench.*

Mr. *Lutwyche.* Did Mr. *Cottingham* give you Notice when the Sign-Manual came over?

Mr. *Tho. Bennet.* Yes, he did give me Notice it was come over, and was very angry I did not go about it.

Mr. *Com. Serj.* I deſire Mr. *Bennet* may give your Lordſhips an Account what Time it was?

Mr. *Tho. Bennet.* About the latter End of *July.*

Mr. *Com. Serj.* I deſire he may be asked, whether he had not made Application to the *Secretary's-Office?*

Mr. *Tho. Bennet.* No, I had not made any Application at all.

Mr. Serj. *Probyn.* Did you never make any Application to any other Perſon, either before or after?

Mr. *Tho. Bennet.* I am poſitive I did not.

Mr. Serj. *Probyn.* Did you ever ſay about that time, that you had made Application to any other Perſon?

Mr. *Tho. Bennet.* No, I don't remember that I did.

Mr. Serj. *Probyn.* No; did you never make Application to any body elſe?

Mr. *Tho. Bennet.* I never told any body, to the beſt of my Knowledge and Belief. I am very confident I never did.

Mr. Serj *Pengelly.* My Lords, if they have done with this Witneſs, we beg Leave to call Mr. *Cottingham*, who was an Agent, and paid over this Money to my Lord *Macclesfield.*

Mr. *Peter Cottingham* ſworn.

Mr. Serj. *Pengelly.* My Lords, we only call Mr. *Cottingham* to acquaint your Lordſhips when he paid over theſe Hundred Guineas to my Lord *Macclesfield.*

Mr. *Cottingham.* In *July* I think it was.

Mr. Serj. *Pengelly.* How long after you received it from Mr. *Tho. Bennet?*

Mr.

Mr. *Cottingham.* I believe I paid it over that Day, or the Day after.

Mr. Serj. *Pengelly.* I desire he may be asked, how long before the Patent was passed?

Mr. *Cottingham.* I can't tell, because I can't certainly say when the Patent passed.

Mr. *Lutwyche.* We desire to ask him, whether it was that Year when the King was beyond Sea?

Mr. *Cottingham.* I think, my Lords, it was; it was in *July* 1723.

Mr. *Com. Serj.* If the Gentlemen of the House of Commons have done with him, I beg that he would give your Lordships an Account what Discourse he had with Mr. *Bennet?*

Ld. Ch. Just. *King.* You hear the Question?

Mr. *Cottingham.* Mr. *Tho. Bennet* told me he had agreed with Mr. *Hamersley* for the Place of the Clerk of the Custodies; and that he did not think it convenient to keep two such considerable Places which depended upon his own Life only; that is, the Master's Place, which he had before purchased, and this. He told me he had disposed of this Place to Mr. *Hamersley*, in order to reimburse himself Part of the Money he had paid to Mr. *Hiccocks* for his Master's Place that he had purchased of him, and for that Reason he did not care to keep both.

Mr. *Com. Serj.* Did he tell you how much he had disposed of it for?

Mr. *Cottingham.* No, he did not.

Mr. *Com. Serj.* My Lords, I desire Mr. *Cottingham* may be asked what it was Mr. *Bennet* desired him to request of my Lord *Macclesfield?*

Mr. *Cottingham.* To the best of my Remembrance, he said, he hoped that his Lordship would accept of a Hundred Guineas, because he had received from him so lately a Present for his Master's Place; and he desired his Lordship to forward his Petition to his Majesty.

Dr. *Sayer.* Was this on the first Application?

Mr. *Cottingham.* Yes; he never made but one Application to me.

Dr. *Sayer.* It is of Consequence; and therefore I desire it may be asked, whether at the first time he apply'd, he made this Offer of One Hundred Guineas?

Mr. *Cottingham.* He did, and I paid it over to my Lord *Macclesfield.*

Dr *Sayer.* I desire Mr *Cottingham* may be asked, whether he knew Mr *Hamersley* before this time?

Mr *Cottingham.* I knew him very well, he was my next Door Neighbour both in Town and Country.

Dr *Sayer.* Did you tell Mr *Bennet* you did not know him?

Mr *Cottingham.* No, I never told him so, it was impossible I should; he was my next Door Neighbour both in *Bell-yard*, and at *Hampstead.*

Dr *Sayer.* What Character had Mr *Hamersley?*

Mr *Cottingham.* A very good one.

E. of *Macclesfield.* When you first spoke to me of this matter, what did you tell me?

Mr *Cottingham.* I told your Lordship Mr *Hamersley* was my next Door Neighbour both in Town and Country; and that he was a Gentleman of as unquestionable a Character as any at the Bar; and your Lordship was pleased to depend upon me for his Character.

Mr *Strange.* He is pleased to say Mr *Bennet* did not inform him what Agreement was made between him and Mr *Hamersley.* But did not he say on what Account he resign'd?

Mr *Cottingham.* He told me he surrendred the Office, to reimburse himself the Money he had paid to Mr. *Hiccocks* for his Office.

Mr. *Strange.* What Office was that?

Mr. *Cottingham.* The Master's Office.

Mr. *Strange.* Did he mention that?

Mr. *Cottingham.* Yes, he did mention it.

Mr. Serj. *Pengelly.* If they have done, we beg leave to ask Mr. *Cottingham*, since he informed my Lord of the Circumstances of Mr. *Hamersley*, whether he acquainted my Lord of Mr. *Hamersley* before or after the time he paid the 100 Guineas?

Mr. *Cottingham.* I acquainted his Lordship before.

Mr. Serj. *Pengelly.* I beg leave to ask another Question. If this Gentleman can inform your Lordships upon what Account it was, he received the 100 Guineas from Mr. *Bennet*?

Mr. *Cottingham.* I received the 100 Guineas upon Account of his Surrender of his Office.

Mr. Serj. *Pengelly.* We beg leave to ask another Question. Whether before he agreed with Mr. *Bennet*, he had informed my Lord *Macclesfield* of any Proposal, or what was to be expected?

Mr. *Cottingham.* No, I don't remember I did. All that passed on that Occasion was, Mr. *Bennet* said he was willing to give 100 Guineas, and he hoped his Lordship would not insist upon more.

Mr. Serj. *Pengelly.* I beg he may be asked another Question. Whether when he came back from my Lord *Macclesfield* to Mr. *Bennet*, with the Account of the Acceptance of the 100 Guineas, whether he did not tell Mr. *Bennet* he ought to take it as a favour that his Lordship accepted so little?

Mr. *Cottingham.* I can't remember, but I think I did not.

Mr. Serj. *Pengelly.* Can you say you did, or you did not?

Mr. *Cottingham.* To the best of my Remembrance I did not.

Mr. Serj. *Pengelly.* We desire he may inform your Lordships what Answer he brought to Mr. *Bennet* from my Lord *Macclesfield?*

Mr. *Cottingham.* The Answer my Lord *Macclesfield* ordered me to give to Mr. *Bennet*, was, that he agreed to accept of the 100 Guineas according to his Proposal.

Mr. Serj. *Pengelly.* Whether was this Offer of the 100 Guineas the first time, or after Mr. *Cottingham* had spoken to my Lord *Macclesfield* about it?

Mr. *Cottingham.* Mr. *Bennet* proposed to me to give the 100 Guineas before I spoke to my Lord about it.

Mr. Serj. *Pengelly.* Whether it was the first Time he offered the 100 Guineas, or some time after.

Mr. *Cottingham.* He offered the 100 Guineas the first time.

Mr. Serj. *Pengelly.* Whether Mr. *Cottingham* did not say the first time, that something was expected?

Mr. *Cottingham.* I believe I did say the Great Seal would expect something.

Mr. *Lutwyche.* Mr. *Cottingham* says he believes he did say something was expected. Then I desire to refresh his Memory, and that he would acquaint your Lordships whether that was mentioned before the 100 Guineas were offered?

Mr.

Mr. *Cottingham.* No, not as I remember.

Mr. *Lutwyche.* What did you ſay on that Occaſion?

Mr. *Cottingham.* I ſaid on that Occaſion, as he offered 100 Guineas, I told him my Lord was willing to accept of it.

Mr. *Lutwyche.* I am ſpeaking of the firſt Diſcourſe he had with him, I think he does recollect that he ſaid my Lord expected ſomething on the Account of this Office?

Mr. *Cottingham.* The firſt Diſcourſe when that was mentioned, I told him my Lord expected ſomething to be paid by way of Compliment.

Mr. *Lutwyche.* Was that the firſt Diſcourſe?

Mr. *Cottingham.* The firſt that I remember.

Mr. *Lutwyche.* I beg another Queſtion. If Mr. *Cottingham* told Mr. *Bennet* that my Lord expected ſomething by way of Compliment, how came Mr. *Cottingham* to know that?

Mr. *Cottingham.* Mr. *Bennet* asked me if I believed his Lordſhip would not expect a Compliment? I told him I believed his Lordſhip would, and then he ſaid he would give 100 Guineas.

Mr. *Lutwyche.* Had you any Diſcourſe with my Lord *Macclesfield* before?

Mr. *Cottingham.* No, none at all. I told him it was uſual to make a Preſent; and then he told me he was willing to give 100 Guineas.

Mr. *Plummer.* I know Mr. *Cottingham* is a very honeſt Gentleman. I deſire to ask him, if Mr. *Bennet* did not then tell him, that when his Brother was admitted, my Lord *Cowper* would take nothing?

Mr. *Cottingham.* He did not upon the Oath I have taken, this is the firſt Word I heard of it: I did not know whether his Brother paid any thing or nothing.

Mr. Serj. *Pengelly.* There is ſome little Variation, tho' not material, between Mr. *Bennet* and Mr. *Cottingham*; we beg that Mr. *Bennet* may come to the Bar again.

E. of *Macclesfield.* My Lords, I don't oppoſe Mr. *Bennet*'s coming to the Bar again; but I think it is very extraordinary for Perſons to produce Witneſſes to confront their own Witneſſes.

Mr. *Lutwyche.* We do it, to confirm the Teſtimony of our Witneſs.

Mr. Serj. *Pengelly.* In an Affair of this Nature it is impoſſible to produce direct Evidence, without producing the Agent employed. Mr. *Cottingham* was the Agent made uſe of by the Chancellor, and we beg leave to ask of Mr. *Bennet* what Anſwer Mr. *Cottingham* brought or ſaid he brought from my Lord Chancellor relating to this Affair.

Mr *Tho. Bennet.* When Mr *Cottingham* went from me to my Lord Chancellor, there was not a Word of Money mentioned the firſt time. I would not ſo much as put it into his Head; and he returned to me the next Day, and told me my Lord Chancellor inſiſted upon a Preſent. Then I ſaid it was very hard, and I would give my Lord 100 Guineas if it muſt be ſo.

Mr Serj. *Pengelly.* Was it not at the ſecond Meeting that he inſiſted on a Preſent to my Lord?

Mr. *Tho Bennet.* At the ſecond Meeting. At the firſt time he did not, becauſe there was no mention made of Money.

Mr. *Cottingham.* All that Mr *Bennet* ſaid to me on that Occaſion was, that in regard a Compliment of 1500 Guineas had been ſo lately given to his Lordſhip, he hoped his Lordſhip would take no more of him than 100 Guineas.

E. of *Macclesfield.* Theſe Gentlemen are pleaſed to differ in their Evidence. I would ask Mr *Bennet* a ſecond time, whether Mr *Cottingham* told him that he did not know Mr *Hamerſley.*

Mr. *Tho. Bennet.* I am ſure Mr. *Cottingham* told me that my Lord Chancellor did not know him, and I think he told me that he did not know him. That made me ſay, why, Sir, that is ſtrange you ſhould not know him, when he lives the next Door to you!

E. of *Macclesfield.* Before, he ſaid Mr *Cottingham* ſaid he did not know Mr *Hamerſley.* I think he told your Lordſhips ſo, that he did not know him.

Mr *Tho. Bennet.* It is impoſſible to ſwear to a Converſation at ſo great Diſtance.

E. of *Macclesfield.* You are not poſitive?

Mr *Tho. Bennet.* I am not poſitive.

E. of *Macclesfield.* Then, if he is not poſitive whether Mr *Cottingham* told him ſo, I deſire he may be asked whether he is poſitive that he anſwered Mr *Cottingham*, why Sir that is very ſtrange that you ſhould not know him, when he lives the next Door to you?

Mr *Tho. Bennet.* I am as poſitive of the one as of the other. This Converſation paſſed between us, as near as I can remember.

Mr *Cottingham.* It is very ſtrange I ſhould ſay ſo of my very next Door Neighbour, and a Gentleman at the Bar.

Mr. *Thomas Bennet.* Therefore I wondered at it.

Mr. *Lutwyche.* There is but one thing more relating to this Article. It is very well known that his Lordſhip was one of the Lords Juſtices.

Mr. *Cottingham.* It is very ſtrange ſure, Mr. *Bennet*, that I ſhould not know him. He is a Gentleman at the Bar, I ſee him every Day at *Weſtminſter-Hall.*

Mr. *Tho. Bennet.* That was the Wonder I made of it. I might miſtake you; I am ſure you ſaid my Lord did not know him, and I believe you ſaid you did not know him. Mr. *Cottingham* is very deaf, and he might miſtake me.

Mr. Serj. *Pengelly.* My Lords, We apprehend, the noble Lord does not put us on the Proof of his Acting as one of the Lords Juſtices.

E. of *Macclesfield.* If Mr. *Delafaye* is there, I deſire he may be called to give an Account of my Acting.

Mr. Serj. *Pengelly.* What I call Mr. *Delafaye* for, is to give an Account of my Lords Acting as one of the Lords Juſtices. If they don't admit it; we muſt call him.

Dr. *Sayer.* My Lords, we deſire he may be called.

Mr. *Delafaye* called.

Mr. Serj. *Pengelly.* We deſire Mr. *Delafaye* may be ſworn.

Mr. *Delafaye* ſworn.

Mr. Serj. *Pengelly.* Since that is inſiſted upon for Form-ſake, which is notorious to the whole Kingdom, we only beg leave to ask Mr. *Delafaye*, whether my Lord Chancellor acted as one of the Lords Juſtices at the Time of this Patent. [ſhewing him Mr. *Hamerſley's* Patent.] Look upon the Date of that Patent.

Mr. *Delafaye.* Yes, my Lords.

Mr. Serj. *Pengelly.* My Lords, we only ask this Witneſs whether my Lord Chancellor, who had then the Cuſtody of the Great Seal, acted as one of the Lords Juſtices?

Mr. *Delafaye.* Yes, my Lords, he did.

Mr Serj. *Probyn.* I beg leave to ask him, whether he knew any thing of Mr. *Bennet*'s Petition

being tranſmitted to his Majeſty abroad, and by whoſe Direction?

Mr. *Delafaye*. Mr. *Bennet*'s Petition was tranſmitted to his Majeſty abroad, by the Direction of the Lords Juſtices.

Mr. Serj. *Probyn*. I deſire this Witneſs would inform your Lordſhips, whether in Mr. *Bennet*'s Petition it was deſired that a Grant of his Office ſhould be made to any, and what particular Perſon.

Mr. *Lutwyche*. I think we may reaſonably object to that Queſtion. We are not for troubling your Lordſhips with unreaſonable Objections; but when a Gentleman experienced in the Law ſhall ask Queſtions, concerning written Evidence, we muſt oppoſe that, and ſubmit it to your Lordſhips.

Then the Managers for the Commons acquainting the Houſe, that they had gone through with their Evidence to the Ninth Article, did intend next to proceed to the Fifth, Sixth, Seventh, and Eighth Articles; and alledging it was requiſite their Evidence ſhould be given entire, ſubmitted it to their Lordſhips whether they ſhould now proceed; whereupon, they and all Parties were directed to withdraw, and the Lords Reſolved to proceed further in the Tryal tomorrow at Ten of the Clock in the Forenoon, and adjourned to Nine a Clock tomorrow Morning.

Friday May 7. The ſecond Day.

The Lords being ſeated in their Houſe, and the Managers being come, and the ſaid Earl ſitting on a Stool as before, and his Council at the Bar, Proclamation was made by the Serjeant at Arms as follows.

Our Sovereign Lord the King ſtrictly charges and commands all manner of Perſons to keep Silence, upon Pain of Impriſonment.

Then another Proclamation was made as on the firſt Day, That all Perſons concerned were to take Notice, that *Thomas* Earl of *Macclesfield* now ſtands upon his Tryal, and they may come forth in order to make good the Charge.

Ld. Ch. Juſt. *King*. Gentlemen of the Houſe of Commons, you may proceed in your Evidence.

Mr. Serj *Pengelly*. The Managers will now proceed to the Fifth, Sixth, Seventh, and Eighth Articles, being all of the ſame Nature and Kind, relating to the Corrupt taking of Money on the Diſpoſal of the Offices of the Maſters in Chancery. The Queſtion between the Commons and the Lord impeached upon theſe ſeveral Articles, is, the Manner of taking this Money. The Commons Charge the taking of the Money to be by Extortion, and Corruption, and to be drawn out of the Maſters againſt their Conſent; the Lord in his Anſwer inſiſts, that it was freely and voluntarily given, as Preſents, upon their reſpective Admittances. The Managers apprehend that they ſhall give your Lordſhips full Satisfaction, that the Charge of the Commons is true, and that the Manner of taking theſe Sums charged on the Lord, will be ſupported by the Evidence that will be produced. The firſt Witneſs that we ſhall call is Mr. *William Kynaſton* to the Fifth Article.

Mr. *William Kynaſton* ſworn.

Mr. Serj. *Pengelly*. We deſire that Mr. *Kynaſton* may be asked, when he was admitted to be one of the Maſters of the Court of Chancery?

Mr. *Kynaſton*. On the 9th of *Auguſt*, 1721.

Mr. Serj. *Pengelly*. We deſire that he may be asked, concerning the manner of his Admittance, what Tranſactions there were before-hand about it, with whom, and what he gave the Lord Chancellor for his Admiſſion?

Mr. *Kynaſton*. After I had agreed with Mr. *Rogers* for the Purchaſe of his Office, I deſired one Mr. *Baily* to go to Mr. *Cottingham*, my Lord's Secretary, to know what my Lord Chancellor would expect for my Admiſſion into the Office, and treat with him about it. Mr. *Baily* told me it was beſt for me to talk with Mr. *Cottingham* myſelf. So I went to him, and told him my Caſe. He mentioned to me that other Maſters, particularly Mr. *Conway* and Mr. *Borret*, had given Fifteen Hundred Guineas apiece. I propoſed to him One Thouſand Pounds, or One Thouſand Guineas; He ſaid he could not mention it to my Lord Chancellor under Fifteen Hundred. I agreed to give it, but I thought he meant Pounds, and made Preparations for it accordingly; but Mr. *Baily* afterwards telling me that he had ſeen Mr. *Cottingham*, and that he inſiſted upon Guineas, I ſent them to him on the 8th by Mr. *Baily*, and the 9th I was admitted and ſworn.

Mr Serj. *Pengelly*. What Arguments were made Uſe of by Mr. *Cottingham*, to raiſe the Price from One Thouſand to Fifteen hundred Guineas?

Mr. *Kynaſton*. I don't particularly remember; but either Mr. *Rogers* or Mr. *Cottingham* ſaid it was the oldeſt and the beſt Office.

Mr. Serj. *Pengelly*. Whether any thing was ſaid that the Office was full of Caſh?

Mr. Serj. *Probyn*. We apprehend that a Leading Queſtion.

Mr. *Lutwyche*. It is a proper Queſtion. But however, if they do not like it in thoſe Words, we will put it into another Form. Whether there was any Diſcourſe about the Profits of the Office?

Mr. *Kynaſton*. I don't remember it.

Mr. *Lutwyche*. Was there any Diſcourſe about your being recommended by any one?

Mr. *Kynaſton*. I told him I had the Honour to be known to the late Lord *Bradford*, and deſired to know whether his Recommendation might be neceſſary.

Mr. *Weſt*. What Reaſon did they give you why it was the beſt Office?

Mr. *Kynaſton*. Becauſe it was the Senior Office, and had moſt Cauſes in it.

Sir *Wm. Strickland*. I deſire to know what Anſwer Mr. *Cottingham* gave him, when he ſaid he believed he might obtain that noble Lord's Recommendation?

Mr. *Kynaſton*. I don't remember any he made.

Mr. *Plummer*. Whether any Objection was made by him to the Price upon his coming into the Office, by reaſon of any Deficiency in *Dormer*'s Office?

Mr. Serj. *Probyn*. That Queſtion is liable to the ſame Objection that was made to the former; it is too leading.

Mr. *Sol. Gen*. It is a fair Queſtion, whether any Objection was made by him, on Account of the Deficiency of *Dormer*'s Office?

Mr. *Kynaſton*. I mentioned this to Mr. *Rogers*, he made little of it; I mentioned it afterwards to Mr. *Cottingham*, he too ſeemed to make light of it, and ſaid it would be made up. So that I apprehended it would be of no great Conſequence.

Mr. Serj. *Pengelly*. What Reaſon did he give, why he thought his Admiſſion to the Office was not worth Fifteen Hundred Pounds?

Mr. *Kynaſton*. I don't know that I mentioned any thing.

Mr.

Mr. *Lutwyche.* In what manner was the Money paid?

Mr. *Kynaſton.* I did not count it, but the Sum of Fifteen Hundred Guineas was carried in a Bag by Mr. *Baily* to Mr. *Cottingham.*

Mr. Serj. *Probyn.* I deſire he may be asked, whether he had any Diſcourſe with Mr. *Rogers* the former Maſter, about the Value of this Office, before he ſpoke with Mr. *Cottingham*?

Mr. *Kynaſton.* Yes.

Mr. Serj. *Probyn.* How much did he ſay it was worth?

Mr. *Kynaſton.* He ſaid, he uſually made 1700 *l.* a Year of the Office, and ſometimes 2000 *l.* a Year.

Mr. Serj. *Probyn.* I deſire he may be asked, what Sum of Money he gave Mr. *Rogers* for his Place?

Mr. *Kynaſton.* 6000 *l.*

Dr *Sayer.* I deſire this Gentleman may be asked, at what time he paid Mr *Cottingham* this Fifteen hundred Guineas; whether it was before or after his Admiſſion?

Mr *Kynaſton.* Before; I believe it was the 8th or 9th of *Auguſt* in the Morning.

Mr Serj. *Probyn.* I deſire this further Queſtion, whether he paid it out of the Suitors Money, or out of Effects of his own?

Mr *Kynaſton.* It could not be paid out of the Suitors Money, for I was not then admitted.

Mr *Com. Serj.* Whether Mr *Baily*, or any body elſe, concerned in negotiating this Affair, gave any Account of your Subſtance and Ability?

Mr *Kynaſton.* No, I believe not.

Mr *Lutwyche.* If the Gentlemen have done, I beg Leave to ask him one Queſtion, and it is in relation to what he was examined to firſt: He ſaid there was a Diſcourſe, that the Office was worth 1700 or 2000 *l.* a Year. Now, my Lords, I would ask him, how it was Mr *Kynaſton* apprehended theſe great annual Profits did ariſe? whether by the ordinary Profits of the Office, or the making Uſe of the Suitors Money?

Mr *Kynaſton.* I underſtood it of both together.

Mr *Lutwyche.* There hath been one Queſtion asked, as if there was no Colour to ſay this Money was paid out of the Suitors Money: But I would beg Leave to ask another Queſtion to explain that: I think Mr *Kynaſton* ſays, that the Money paid for him by Mr *Baily*, was not out of the Suitors Money, becauſe he was not then admitted; but I would ask, how it was repaid or replaced?

Mr *Kynaſton.* I did not imagine, when I came to Town, that the Place would have come to ſo much: There was 1100 *l.* and 400 *l.* I borrow'd of a Gentleman, one Mr *Rogers* at *Temple-Bar*; and I afterwards accompted with him for that Money, for I kept an Account of the Money of the Court with him.

Mr Serj. *Pengelly.* What Sum of Money was reported to be in your Office, and to go along with the Office as Caſh?

Mr *Kynaſton.* I was told there was about 20,000 *l.*

Mr *Com. Serj.* I deſire to know who told him ſo?

Mr *Kynaſton.* Mr *Rogers.*

Lord *Lechmere.* When the 1100 *l.* and the 400 *l.* was accompted for to the Perſon that firſt lent it, if I did underſtand him right, he ſays he accompted for it, and it was allow'd out of the Suitors Money.

Mr *Kynaſton.* Yes, my Lords, the Money lent me to pay Mr *Cottingham*, I did accompt for that Money out of the Money belonging to the Suitors of the Court: I underſtood it was uſual to do ſo, and that others had done it.

Lord *Lechmere.* My Lords, I would ask him another Queſtion; I think Mr *Kynaſton* talks of 6000 *l.* being paid by him to his Predeceſſor: I would be glad to know in what manner that was paid, and out of what Money or Effects?

Mr *Kynaſton.* My Lords, when I treated with Mr *Rogers*, he mention'd to me what Money he had in his Hands belonging to the Office; and we entred into Articles in relation to my paying him 6000 *l.* for his Place: And when I came up to Town, in order to take the Office, before I went to my Lord Chancellor's, I gave him a Bond for 6000 *l.* This was the 9th, and on the 12th he deliver'd me up the Bond, and paid me 9 *l.* in Money; and I gave him a Receipt for Six thouſand and nine Pounds.

E. of *Strafford.* I deſire he would explain himſelf on that Part; where he ſays, he gave him up his Bond; whether he reckoned the 6000 *l.* ſo much ſhort of the Suitors Money?

Mr *Kynaſton.* Yes, my Lords, I did.

E. of *Macclesfield.* My Lords, I deſire he may be asked this Queſtion. He ſpeaks of a Gentleman that paid him 1100 *l.* Part of the 1500 Guineas; I deſire he may be asked, whether that Gentleman had any, and what Money of his in his Hands?

Mr *Kynaſton.* My Lords, I had Money in that Gentleman's Hands: When I lived in the Country, he uſed to receive Money for me in Town, on Government Securities, and other Occaſions, and pay as I directed: There was an Accompt Current between us, and I did not then preciſely know what Balance was then in his Hands; but I have caſt it up ſince, and find that there was about 300 or 400 *l.* due to me at that time.

E. of *Macclesfield.* If I apprehend him right, he ſays he had an Accompt current with that Gentleman at that time, and kept Caſh with him.

Mr *Kynaſton.* He uſed to receive and pay Money for me when I was in the Country.

E. of *Macclesfield.* I beg Leave to ask one Queſtion more, if Mr *Kynaſton* did not afterwards keep, with that Gentleman, the Caſh of the Suitors, as well as his own Caſh, promiſcuouſly?

Mr *Kynaſton.* Yes.

Sir *Wm. Strickland.* When was the Fifteen hundred Guineas paid?

Mr *Kynaſton.* On the 8th the Fifteen hundred Guineas was paid, and the 9th I was admitted.

Mr Serj. *Pengelly.* We don't now proceed to examine relating to the manner of Payment for the Offices out of the Suitors Money, becauſe there will be a diſtinct Examination as to that, upon another Article; the preſent Queſtion being only about the Sum paid for the Admiſſion, and not out of what Money, which we don't enter into at preſent.

Mr *Lutwyche.* My Lords, we think it neceſſary to mention this, becauſe otherwiſe it will take up a great deal of your Lordſhips time unneceſſarily, and it will be proper to keep the Evidence entire; and therefore we hope the Counſel on the other Side ſhall be confined to ask ſuch Queſtions only, as are proper to the Article they are upon. My Lords, we deſire Mr *Charles Baily* may be called.

Mr. Charles Baily *ſworn.*

Mr Serj. *Pengelly.* My Lords, I deſire he may be asked, whether he paid any Money, and what Sum to Mr *Cottingham*, and when?

Mr *Baily.* My Lords, a day or two before Mr *Kynaſton* was admitted, I paid Fifteen hundred Guineas

Guineas, which was given for his Admiſſion. I delivered it in a Bag to Mr *Cottingham.*

Mr Serj. *Pengelly.* For what Uſe was it paid?

Mr *Baily.* I apprehend it was for the Uſe of my Lord Chancellor.

Mr *Lutwyche.* Upon what Account?

Mr *Baily.* For his Admiſſion to the Office, on Mr *Rogers*'s Surrender.

Mr Serj. *Pengelly.* I think he ſays it was paid a day or two before he was admitted.

Sir *Wm. Strickland.* Before the Payment of this Money, what Diſcourſe was there between you and Mr *Cottingham*?

Mr *Baily.* I was requeſted, by Mr *Kynaſton*, to attend Mr *Cottingham*, to know what was expected; and Mr *Cottingham* told me Fifteen hundred Guineas was expected to be paid, as a Sum for Mr *Kynaſton*'s Admiſſion.

Mr Serj. *Pengelly.* If the Counſel for the noble Lord don't ask this Witneſs any thing, we beg Leave to call another Witneſs.

Mr *Com. Serj.* There are ſeveral matters we apprehend proper to be asked now, and yet may fall under the other Article. Whether it is your Lordſhips Pleaſure that we ſhall now ask Mr *Baily* as to the Circumſtances and Character of Mr *Kynaſton*?

Mr *Lutwyche.* My Lords, there is an expreſs Article to that Point; wherefore when we come to that, then is the time.

Mr Serj. *Probyn.* One Queſtion may be proper to be asked before this Gentleman goes, and that is, whether when Mr *Cottingham* told him what was expected on his Admiſſion, he told Mr *Kynaſton* of it?

Mr *Baily.* Yes, Sir, I told Mr *Kynaſton* that Fifteen hundred Guineas was expected.

Mr Serj. *Probyn.* Then I deſire he may be asked, whether Mr *Kynaſton* did not immediately conſent to give it, or what did Mr *Kynaſton* ſay?

Mr *Baily.* Mr *Kynaſton* ſaid he muſt ſubmit to it, and do as Mr *Cottingham* had mention'd, or to that purpoſe.

Mr Serj. *Pengelly.* Whether Mr *Kinaſton* informed him of offering him any leſs Sum, and what?

Mr *Baily.* Mr *Kynaſton* mention'd to me that he thought it had been but 1500 *l.*

E. of *Macclesfield.* How came Mr *Baily* to know it was Guineas?

Mr *Baily.* Becauſe Mr *Cottingham* told me ſo.

Mr *Cottingham* called, but did not immediately appear.

Mr Serj. *Pengelly.* My Lords, we are unwilling to give your Lordſhips Trouble, only beg Leave to take Notice, that Mr *Cottingham* was Secretary to the Lord impeach'd, during the whole Courſe of his Adminiſtration; he is not immediately under the Power of the Managers, but he is under the Obligation of a Summons, and had Notice to attend.

Mr *Cottingham* appears.

Mr Serj. *Pengelly.* My Lords, we deſire he may be ſworn.

Mr *Cottingham* ſworn.

Mr Serj. *Pengelly.* My Lords, we beg Leave to ask Mr *Cottingham* this Queſtion; the Money that he received from Mr *Charles Baily*, whether he paid it over to my late Lord Chancellor, and when?

Mr *Cottingham.* The Money which I received from Mr *Charles Baily*, the Fifteen hundred Guineas, I paid it to my Lord in a day or two I believe, I believe the next day; it was very ſoon after I received it from Mr *Baily.*

Mr Serj. *Pengelly.* Whether he acquainted the Earl of *Macclesfield* that he had received it upon Mr *Kynaſton*'s Admiſſion?

Mr *Cottingham.* Yes, my Lords, I told the Earl of *Macclesfield* that Mr *Baily* had paid me the Money, by the Direction of Mr *Kynaſton.*

Mr Serj. *Pengelly.* How long was that before Mr *Kynaſton* was admitted?

Mr *Cottingham.* I can't ſay juſtly the time, it might be two or three days. There was a day appointed for the Admiſſion of Mr *Kynaſton*, but ſomething happened that he could not be admitted that day.

Sir *Wm. Strickland.* My Lords, I deſire to ask this Witneſs one Queſtion: At that time, whether Mr *Cottingham* can recollect himſelf, if Mr *Kynaſton* did not make an Objection of the great Deficiency that had happened in *Dormer*'s Office?

Mr *Cottingham.* Upon the Oath that I have taken, he did not.

Sir *Wm Strickland.* I deſire another Queſtion, whether he did not tell Mr *Kynaſton* that this was one of the beſt Offices?

Dr *Sayer.* My Lords, I ask your Pardons; I hope they ſhall be confined to the general Queſtion what was ſaid, and not to Particulars.

Sir *Wm. Strickland.* What was ſaid in relation to the Goodneſs of the Office?

Mr *Cottingham.* I did ſay before the Honourable Committee, that when he agreed to give the Fifteen hundred Guineas, I told him that he had purchaſed a very good Office; and I did ſay, that there was a great deal of Buſineſs in it; but I never knew what Money was in the Office, nor do I know it to this day. I own I did ſay before the Honourable Committee, that I told him he had purchaſed a good Office.

Mr Serj. *Pengelly.* Whether was this before or after the Agreement made with Mr *Kynaſton?*

Mr *Cottingham.* I think at the ſame time, juſt after we had ſettled the Compliment to be paid to my Lord *Macclesfield*, I told him he had purchaſed an Office with very good Buſineſs in it.

Mr Serj. *Probyn.* I deſire one Queſtion more, whether he remembers that there was any Mention made of 1000 *l.* or One thouſand Guineas by Mr. *Kynaſton?*

Mr *Cottingham.* No, I remember nothing of it. He asked me what my Lord expected; I told him what my Lord had from the preceding Maſters, he expected the ſame from him: I never heard a Word of 1000 *l.* or One thouſand Guineas, nor knew nothing at all of it. I have given you the beſt Account I can as to the Fact that happened relating to the Agreement: Mr *Baily* may remember more of it; the Fact is above four Years ago.

Mr Serj. *Pengelly.* My Lords, we now beg Leave to proceed to the 6th Article, relating to Mr *Thomas Bennet*, who was admitted the 1ſt of *June*, 1723.

Mr *Thomas Bennet* (ſworn before.)

Mr Serj. *Pengelly.* My Lords, we deſire that Mr *Bennet* may give an Account to your Lordſhips when he was admitted, and upon what Bargain? Give an Account of the whole Treaty.

Mr *Tho. Bennet.* I was admitted the 1ſt of *June*, 1723. and before my Admiſſion, and as ſoon as I had agreed with Mr *Hiccocks* my Predeceſſor, I applied to Mr *Cottingham*, and deſired him that he would acquaint my Lord Chancellor I had agreed with Mr *Hiccocks* for to ſucceed him in his Office, and deſired him to let me know

know my Lord Chancellor's Thoughts, whether he approved of me to ſucceed Mr. *Hiccocks*; ſoon after that, I believe the next Day, or a Day after, he met me, and told me, he had acquainted my Lord with the Meſſage I ſent; he ſaid my Lord expreſſed himſelf with a great deal of Reſpect for my Father Mr. Serjeant *Bennet*, and that he was glad of this Opportunity to do me a Favour and Kindneſs, and he had no Objection in the World to me: That was the Anſwer Mr. *Cottingham* returned; he then mentioned there was a Preſent expected, and he did not doubt but I knew that; I anſwered, I had heard there was, and I was willing to do what was uſual; I deſired to know what it was that was expected, and what would be expected; he ſaid he would name no Sum, and he had the leſs Reaſon to name a Sum to me, becauſe I had a Brother a Maſter, and I was well acquainted with Mr. *Godfrey* who had recommended me, and I might apply to them, and they would tell me what was proper for me to offer. I told him upon that Occaſion I would conſult my Brother and Mr. *Godfrey*; accordingly I did, and I returned to Mr. *Cottingham*, and told him, I had talked with them about it, and their Opinion was a thouſand Pounds (but I believe, I ſaid, I would not ſtand for Guineas) was ſufficient for me to offer. Upon this Mr. *Cottingham* ſhook his Head, and ſaid, that won't do Mr. *Bennet*, you muſt be better adviſed: Why, ſaid I, won't that do, I think it is a noble Preſent: Says he, a great deal more has been given: Says I, I am ſure my Brother did not give ſo much, nor Mr. *Godfrey*, and thoſe Perſons, you adviſed me to conſult with, told me it was ſufficient, and I deſire you to acquaint my Lord with the Propoſal: Says he, I dont care to go with that Propoſal, you may find ſome-body elſe to go: Says I, I don't know whom to apply to: Says he further, ſure Mr. *Bennet*, you wont go to lower the Price, (theſe were his very Words, at leaſt, I am ſure that was the Meaning of them) I can aſſure you Mr. *Kinaſton* gave 1500 Guineas. I ſaid that was above 3 or 4 Years ago, and ſince that Time there have been ſeveral Occaſions of lowering the Prices; the fall of Stock hath lowered the Value of Money; and I think I mentioned *Dormer*'s Deficiency, and I did not know what the Conſequence of that might be; and therefore, I thought at this time of Day, when Stock and every Thing was fallen, a thouſand Guineas was more now, than 1500 when Mr. *Kinaſton* gave it. He ſtill inſiſted he did not care to go with that Meſſage. Says I, only acquaint my Lord with it, and if my Lord inſiſts upon more, I will conſider of it: Says he, there is no haggling with my Lord, if you refuſe it, I don't know the Conſequence, he may reſent it ſo far, as not to admit you at all, and you may loſe the Office. Then I began to conſider, and was loth to loſe the Office, and told him I wou'd give 1500 *l*, he ſaid Mr. *Kinaſton* had given Guineas. Then I asked whether it muſt be in Gold. He ſaid, in what you will, ſo it be Guineas. In a Day or two after he came and told me, that my Lord was pleaſed to accept of me, and he ſhould admit me aſſoon as Opportunity ſerved, and he would give me Notice. He accordingly gives me Notice about the latter end of *May*; he told me my Lord had fixed a Day for my Admiſſion, and my Father and I went to my Brother *Bennet*'s, and took him up by the Way, in order to pay our Reſpects to my Lord on that Occaſion. We had not been there long, but there was a Meſſage brought to my Houſe, to let me know that my Lord was very ill, and I could not be admitted; but I ſhould know in a little Time when I ſhould: Upon that, I ſaw Mr. *Cottingham* afterwards, and I asked him how my Lord did, and when I ſhould be admitted: Says he, I can't fix the Day; but be in a Readineſs, and I ſhall ſend for you. Accordingly on the 1ſt of *June*, 1723. he ſent, and deſired me to come immediately, and to come alone, and bring no Body with me, for my Lord wou'd ſwear me in that Morning. Accordingly I went, and the firſt Queſtion Mr. *Cottingham* ask'd me was, if I had brought the Money? I told him, to be ſure I ſhould not come without it. He asked what it was in? I told him in Bank Bills, two Bank Bills, one of 1000 *l*. and the other 575 *l*. He took them up, and carried them to my Lord: He returned back, and told me my Lord was ready to admit me. I was carried up Stairs, and then ſworn in his Bed-Chamber.

Mr. Serj. *Pengelly*. My Lords, I deſire, if he can remember, he may be asked in what Name thoſe Notes were made payable, or in what manner they were made?

Mr. *Tho. Bennet*. I can't remember the Names the Notes were made payable to, they were ſent for from the Bank for this Purpoſe; but I believe they were feigned Names.

Mr. Serj. *Pengelly*. I deſire he may be asked, why he thinks they were feigned Names, and for what Reaſon the Notes were taken in feigned Names?

Mr. *Tho. Bennet*. The Reaſon was, becauſe I did not think it proper to take them out in the noble Lord's Name, nor in my own Name.

Mr. Serj. *Pengelly*. My Lords, I deſire he may be asked, of whom he received thoſe Bank Notes, whether they were his own, or whether he borrowed them.

Mr. *Tho. Bennet*. I borrowed a Draft upon the Bank of my Brother, he kept his Caſh at the Bank, and he gave me a Draft upon the Bank, and I ſent to the Bank, and ordered the Notes to be made out in feigned Names.

Mr. Serj. *Pengelly*. I deſire he may be asked, whether by his Brother, he means his Brother the Maſter?

Mr. *Tho. Bennet*. Yes, my Brother the Maſter?

Mr. Serj. *Pengelly*. And where did he keep his Caſh?

Mr. *Tho. Bennet*. He kept his Caſh at the Bank.

Mr. Serj. *Pengelly*. I deſire Mr. *Bennet* may inform your Lordſhips what Converſation he had with my Lord *Macclesfield* when he was admitted?

Mr. *Tho. Bennet*. I had no Converſation with him before I was ſworn. At that Time my Lord was in his Bed, and aſſoon as I was ſworn in, my Lord called me to him, ſhook me by the

Hand and wiſh'd me Joy, and ſaid he had a Reſpect for my Father Serjeant *Bennet*, his old Friend and Acquaintance, and the Family; and ſaid he, you are ſworn in by a dying Chancellor. I told him, I hoped his Lordſhip would live a great many Years.

Mr. Serj. *Pengelly*. I deſire Mr. *Cottingham* may be called.

Mr. *Cottingham* called, and appeared.

Mr. Serj. *Pengelly*. My Lords, I deſire Mr. *Cottingham* may be asked, to whom he paid the 1500 Guineas which he received from Mr. *Tho. Bennet*?

Mr. *Cottingham*. I paid it to the Earl of *Macclesfield*.

Mr. Serj. *Pengelly*. Whether he carried it immediately or not, or at what Time?

Mr. *Cottingham*. Mr. *Bennet* brought it to me, as I remember, in a Bank Note of 1500 Guineas, and I gave it to my Lord.

Mr. Serj. *Pengelly*. Whether this was done immediately after you received it?

Mr. *Cottingham*. Yes, my Lords, immediately.

Mr. Serj. *Pengelly*. That is all we ask, my Lords, we only beg leave to obſerve one thing that ariſes from the Anſwer of the Lord impeached to theſe two Articles, which is, that afterwards, and before the Impeachment, he did deliver the Preſent ſo ſent to him by the ſaid *William Kinaſton*, being 1575 *l.* and alſo the Preſent ſo ſent to him by the ſaid *Tho. Bennet*, being the like Sum of 1575 *l.* into the Court of Chancery, in open Court, *&c.*

Mr. Serj. *Probyn*. My Lords, we deſire that Mr. *Cottingham* may be asked one Queſtion, what Converſation there was between him and Mr. *Bennet*, concerning the Payment of this 1500 Guineas?

Mr. *Cottingham*. Mr. *Bennet* told me, that he had agreed with Mr. *Hiccocks* for the ſurrender of his Office. He told me he was a Perſon known to the Earl; but if he wanted a further Character, his Father, Sir *John Bennet*, and his Brother, would give him a further Character. I acquainted the Earl, his Lordſhip told me that he knew Mr. *Bennet*, that he had a good Character, and had married a good Fortune, and the Family were a wealthy Family, ſo that the Earl would oblige him, and admit him. A Day was appointed to admit Mr. *Bennet*; but the Earl falling Sick before the Time came that he was to be admitted, which was, I think, the laſt Day of *Eaſter* Term, 1723, it was then delayed; Mr. *Bennet* was prodigious preſſing to have it done, and ſaid that Mr. *Hiccocks* refuſed to go on with any Buſineſs in the Office; and he had been complimented upon it, the Family knew it, and he was loth to be diſappointed, and he teized me almoſt out of my Life; upon that, I promiſed to ſpeak to the Earl, and aſſoon as the Earl was able to do Buſineſs, it was done.

Mr. Serj. *Probyn*. If you pleaſe to recollect your ſelf, what was the particular Sum Mr. *Bennet* offered?

Mr. *Cottingham*. 1500 Guineas.

Mr. Serj. *Probyn*. Did he talk of any leſs Sum?

Mr. *Cottingham*. Not a Farthing leſs; he asked me what was expected, I told him the Sum Mr. *Kinaſton* had paid, which was 1500 Guineas; and he never offered a farthing leſs.

Mr. Serj. *Probyn*. We deſire Mr. *Cottingham*, that you would recollect your ſelf, and tell us whether he offered 1000, or 1500 Guineas?

Mr. *Cottingham*. I have recollected, and what he offered to me was 1500 Guineas, and I never heard of a Farthing leſs; I never heard a Word of 1000 Guineas.

E. of *Macclesfield*. If your Lordſhips pleaſe, I deſire Mr. *Cottingham* may be asked, what Condition I was in, in reſpect to my Health at that Time?

Mr. *Cottingham*. The Earl at that Time was very ill, Mr. *Bennet* having preſſed to be admitted the firſt Opportunity; I think your Lordſhip fell ill the laſt Day of *Eaſter* Term, 1723. and I meeting with Doctor *Mead*, the Doctor told me, the Earl was in ſo dangerous a Condition, that if his Diſtemper had not a Turn, he thought he could not live 24 Hours. The Doctor and I went and ſupped together; he bid me to be at the Earl's the next Morning; I met him there, and he told me the Earl's Diſtemper had a Turn, and he might get over it: I asked the Doctor, telling him there was a Buſineſs that Mr. *Bennet* preſſed me to do, if it would be ſafe for the Earl to do it. He told me if it did not admit much Thought and much Company, it might be done. I told him it would not admit much Thought or Company, and he ſaid it might be done.

E. of *Macclesfield*. What was the Occaſion that Mr. *Bennet* was deſired to come alone?

Mr. *Cottingham*. The Reaſon was upon the Account of your Lordſhip's Indiſpoſition; and for that Reaſon, I ſent to Mr. *Hiccocks* for his Surrender, becauſe my Lord could not ſee much Company.

Mr. *Strange*. I deſire to ask you, upon whoſe Importunity it was you asked Dr. *Mead* this?

Mr. *Cottingham*. I asked it my ſelf, but it was, becauſe Mr. *Bennet* importuned me ſo: And I remember this Circumſtance, when I went to his Houſe, he had ſomething of the Jaundice, and looked ill. I asked him if he was fit to be admitted: I thought Mr. *Bennet* would not have been ſo eager, if he did not think the Earl had been dying, and that then he would have waited longer.

Mr. *Plummer*. My Lords, if the Gentlemen have done, I deſire to ask one Queſtion; Whether on Occaſion of theſe Maſters Places being vacant, he took Directions from my Lord Chancellor to ſet a Price, or did it of his own Head?

Mr. *Cottingham*. I had no Directions in this matter; but when any Vacancy or Alienation, happened, and they asked me what Compliment I thought would be acceptable, I told them the Compliment that had been before made. I ſpoke it as my own Opinion, and without any Directions from the Earl.

Mr. Serj. *Pengelly*. I deſire he may be asked, whether ever he concluded any Bargain with any of theſe Maſters without his Lord's Approbation?

Mr. *Cottingham*. No, I did not.

Mr. *Onſlow*. I would ask Mr. *Cottingham* one Queſtion, which, I think, he hath not anſwered; I ask whether he had not in general Directi-

ons

ons from the Lord Chancellor, to inſiſt upon, or ask any particular Prices for theſe Places?

E. of *Macclesfield.* My Lords, I am ſorry the learned Gentlemen do not obſerve their own Rule, in confining their Examinations to ſuch Articles as they go upon, thoſe they have a Right to ask to, and thoſe only; therefore with humble Submiſſion, it is more proper on each Article where they charge me to have inſiſted upon a Price, to ask to that Price, than to ask theſe general Queſtions, whether I did ever direct him to inſiſt upon any Price? It is not that I am afraid of the Queſtion that is put; but I am afraid of its being made a Preſident for giving your Lordſhips a great deal of unneceſſary Trouble.

Mr. *Onſlow.* This is proper to this Article, becauſe it charges the Earl with inſiſting upon Prices. Therefore I deſire to know, whether the Earl did ever give any Order to him to inſiſt upon any of theſe Prices? I hope the Gentleman ſhall anſwer the Queſtion.

Mr. *Lutwyche.* We apprehend we are upon a proper Queſtion, on the one Side we ſay theſe Sums were inſiſted upon, and that there was an Agreement made for them; on the other Side the noble Lord in his Anſwer ſays, they were Preſents, without any Regard to any Agreement, and voluntary, as if there had been no Bargain at all.

Mr. Serj. *Pengelly.* My Lords, we only propoſe a general Queſtion, which, we apprehend, ariſes from Mr. *Cottingham*'s Examination. When Money is expected, we apprehend it is the ſame as inſiſting upon it: Therefore we deſire Mr. *Cottingham* may inform your Lordſhips, whether he inſiſted upon any of theſe Prices without Direction from my Lord *Macclesfield?*

Mr. *Cottingham.* The Maſters propoſed thoſe Sums to me, to make ſuch a Compliment to my Lord, and I acquainted the Earl with it: I did nothing without the Earl's Approbation.

Mr. Serj. *Pengelly.* I deſire he may be asked if he did not inſiſt on thoſe Prices?

Mr. Serj. *Probyn.* My Lords, I beg the Queſtion may be confined to ſome particular Article they are now upon; for as they are now upon two particular Articles, they cannot, according to the Rules they were pleaſed themſelves to lay down, ask any Queſtion, but what relates to them: We therefore deſire they may confine themſelves to theſe two Articles. As to any Queſtion they propoſe to any of the Articles they have opened, let them be as general as they will; but we deſire they may confine themſelves to thoſe Articles: Otherwiſe one Queſtion may involve all the Articles together.

Mr. Serj. *Pengelly.* Whether we ſhould now ask to *Bennet* or *Kinaſton*, or to thoſe who came after, we are under your Lordſhip's Direction: But we deſire he may be asked, whether from the Direction he received from the Earl of *Macclesfield*, he did not inſiſt on thoſe Sums from *Kinaſton* and *Bennet?*

Mr. *Cottingham.* I have told you that they had both voluntarily agreed of their own Accord to give 1500 Guineas, and I told my Lord *Macclesfield* of it.

Mr. Serj. *Pengelly.* I deſire he may be asked, whether he did not by Direction of my Lord Chancellor inſiſt upon thoſe Sums, and he would not receive under?

Mr. *Cottingham.* I did not. They asked me what I thought the Earl expected, I told them 1500 Guineas, as I mentioned before; they agreed to give it, and my Lord ſaid he would take it.

Mr. Serj. *Pengelly.* At the Time when the Lord *Macclesfield* agreed to take thoſe Sums, whether he did not inſiſt upon the full of thoſe Sums to be paid?

Mr. *Cottingham.* Yes, he ſaid he would take them.

Mr. *Plummer.* My Lord *Macclesfield* does not diſown in his Anſwer the accepting of a Preſent in general; but avoids ſaying what Sum in particular he accepted. Therefore I am apt to think the Inſtructions, the Secretary had, might be like the Anſwer: So that it is very proper to ask whether he had not general Inſtructions, that when any Maſter's Place was vacant, or like to be vacant, he ſhould inſiſt upon ſuch a Price.

Mr. *Cottingham.* I had not ſuch Inſtructions. The Gentlemen came and talked to me, and propoſed to me the Sum they were willing to give, and I laid it before the Earl: I had no particular Inſtructions.

Mr. *Plummer.* With Submiſſion, Mr. *Cottingham* has not anſwered the Queſtion, therefore I beg Leave to ask him further, whether he hath not ſaid elſewhere, that he received particular Directions from my Lord *Macclesfield* to inſiſt upon ſuch a Sum?

Mr. *Cottingham.* I cannot ſay but I have, and if you name the Maſters, I can anſwer more particularly.

Sir *Wm. Strickland.* I would ask him this Queſtion, whether he has not directly ſaid, that he tranſacted none of theſe Affairs without my Lord's Direction?

Mr. *Cottingham.* I own it, I have ſaid ſo; I own it before your Lordſhips, that I ſaid that what I did he approved of.

E. of *Macclesfield.* I deſire he may be asked this Queſtion, to each diſtinctly, Whether I ſo much as knew any thing of the Matter as to any Sum offered by Mr. *Kinaſton* or Mr. *Bennet*, till he told me the whole Sum?

Mr. *Cottingham.* No, never.

E. of *Macclesfield.* Whether I had any Diſcourſe about Mr. *Kinaſton* or *Bennet*, being admitted, or the Money they ſhould give, till he told me they would give me 1500 Guineas?

Mr. *Cottingham.* No, not any Diſcourſe. I told the Earl what they offered, and he was pleaſed to accept it.

E. of *Macclesfield.* I beg Leave he may be asked this other Queſtion, ſince theſe Gentlemen have gone now into that Matter, whether he did not tell me at the ſame Time that Mr. *Kinaſton* ſaid he would give me 1500 Guineas, that he likewiſe ſaid, if that was not ſufficient I might pleaſe myſelf?

Mr. Serj. *Pengelly.* I hope the Queſtion may be asked general, when they have taken Liberty to interrupt the Managers for asking leading Queſtions; and hope his Lordſhip will ask nothing that is leading.

E. of *Macclesfield.* Then I deſire he may be asked when Mr. *Kinaſton* offered 1500 Guineas, whether he ſaid any Thing concerning any further Sum?

Mr. *Cotting-*

Mr. *Cottingham.* To the beſt of my Remembrance, I ſpeak it doubtfully, I am not certain, Mr. *Kinaſton* told me if the 1500 Guineas would not ſatisfy the Earl, he ſhould ſatisfy himſelf.

E. of *Macclesfield.* I deſire to know certainly whether he told me ſo?

Mr. *Cottingham.* I am ſure I did.

E. of *Macclesfield.* What did I ſay thereon?

Mr. *Cottingham.* Your Lordſhip ſaid you would take 1500 Guineas, and you would take no more.

Mr. *Plummer.* I deſire to ask this Queſtion, How Mr. *Kinaſton* came to offer more, or to think the Earl ſo inſatiable that the Earl expected more: I ask Mr. *Cottingham* how he came to offer from Mr. *Kinaſton* more than was asked?

Mr. *Cottingham.* I told you what my Lord *Macclesfield* put to me. I certainly told him ſo. But as to what Mr. *Kinaſton* told me, that I ſpeak doubtfully; it is a conſiderable Time ago; I cannot ſpeak it poſitively, I ſpeak it doubtfully, to the beſt of my Remembrance it was ſo: I told your Lordſhips before.

Mr. Serj. *Pengelly.* My Lords, We ſhall not trouble your Lordſhips with calling any more Witneſſes on this Article, when it appears plainly, that he was intruſted to adjuſt the Prices, and whether they were given to him or my Lord is not material. As to this Article and the Article relating to Mr. *Kinaſton*, we ſhall leave it with this Obſervation, He is pleaſed to ſay in his Anſwer, as to the few Preſents received from Mr. *Kinaſton* and Mr. *Bennet*, that he the ſaid Earl did afterwards and before the Impeachment deliver the ſame into the Court of Chancery, in open Court. All that we beg Leave to put your Lordſhips in Mind of, is, that from your own Journals it will appear, the Impeachment was brought up here the 13*th* of *February* 1724. when my Lord comes to ſhew at what Time he paid the Money, we apprehend it will be ten Days after. The next Article relates to Mr. *Francis Elde.*

Mr. *Elde* called.

Mr. *Lutwyche.* My Lords, we deſire that Mr. *Elde* my be ſworn.

(Sworn accordingly.)

Mr. *Lutwyche.* My Lords, we deſire Mr. *Elde* may be asked when it was he was admitted a Maſter in Chancery?

Mr. *Elde.* My Lords, I was admitted the firſt Day of *February* laſt was twelve Month.

Mr. *Lutwyche.* We deſire he may be asked, whether he applied in Perſon to my Lord *Macclesfield* to be admitted into this Office, and whether it was upon Death or Reſignation?

Mr. *Elde.* Upon the Death of Mr. *William Fellowes* ſome of my Friends came to me, and put it into my Head that this Office might be a proper Office for me, and I took ſome Time to conſider of it. I had ſome Encouragement at the Bar, and was very unwilling to quit it, but after two Days Conſideration I went to my Lord himſelf; I told his Lordſhip an Office was fallen by the Death of Mr. *Fellowes*; if his Lordſhip thought me a proper Perſon. And I ſhould be glad to have it. I was come to wait upon him about it. His Lordſhip ſaid, he had no manner of Objection to me, he had known me a conſiderable Time, and he believed I ſhould make a good Officer.

Mr. *Lutwyche.* What further Diſcourſe was there?

Mr. *Elde.* My Lord at that Time deſired me further to conſider of it, and come to him again: And ſo I did. I went back from his Lordſhip, and I came again in a Day or two, I believe it was the ſecond after I came back from his Lordſhip, and told him I had conſidered of it, and deſired to know if his Lordſhip thought fit to admit me; and I would make him a Preſent of 4 or 5000 *l.* I cannot ſay which of the two I ſaid, but I believe it was 5000 *l.*

Mr. *Lutwyche.* What Anſwer did my Lord return, when you made him that Propoſal?

Mr. *Elde.* My Lord ſaid, Thee and I, or You and I, my Lord was pleaſed to treat me as a Friend, muſt not make Bargains.

Mr. *Lutwyche.* My Lords, we deſire he may be asked, whether my Lord *Macclesfield* ſaid in what Manner he would treat with him, whether in a more beneficial manner than any Body elſe?

Mr. *Elde.* My Lord *Macclesfield* did ſay, that if I was deſirous of having the Office, he would treat with me in a different Manner than he would with any Man living; thoſe were the Words my Lord uſed, to the beſt of my Remembrance.

Mr. Serj. *Pengelly.* After this Anſwer of my Lord *Macclesfield*, that they muſt not make Bargains, what further Application did he make?

Mr. *Elde.* I made no further Application at all, but ſpoke to Mr. *Cottingham*, meeting him in *Weſtminſter-hall*, and told him I had been at my Lord's, and my Lord was pleaſed to ſpeak very kindly to me, and I had propoſed to give him 5000 *l.* Mr. *Cottingham* anſwered, Guineas are handſomer.

Mr. *Lutwyche.* We deſire to know what he paid, and in what Manner, and in what Specie?

Mr. *Elde.* My Lords, I paid my Lord,— I cannot ſay I paid it him, but I paid 5000 Guineas.

Mr. *Lutwyche.* In what Manner? Who did you pay it to?

Mr. Serj. *Pengelly.* After this Agreement with Mr. *Cottingham* to make it Guineas, as being handſomer; we deſire he may inform your Lordſhips what he did purſuant to this, and what he carried with him?

Mr. *Elde.* Upon this I immediately went to my Lord's: I was willing to get into the Office as ſoon as I could. I did carry with me 5000 Guineas in Gold and Bank Notes: I am not certain whether there was 3000 Guineas in Gold or two, but I think there was three, and the Reſidue of the Money was in Bank Notes. This I brought to my Lord's Houſe.

Mr. Serj. *Pengelly.* My Lords, we deſire he may be asked what they were put into, or in what they were carried?

Mr. *Elde.* I had the Money in my Chambers. I could not tell how to convey it; It was a great Burthen and Weight, but recollecting I had a Basket in my Chamber, I put the Guineas into the Basket, and the Notes with them; I went in a Chair and took with me the Basket in my Chair. When I came to my Lord's Houſe I ſaw Mr. *Cottingham* there, and I gave him the Basket, and deſired him to carry it up to my Lord.

Mr.

Mr. Serj. *Pengelly.* What Anſwer did he return?

Mr. *Elde.* I ſaw him go up Stairs with the Basket, and when he came down he intimated to me that he had delivered it.

Mr. *Lutwyche.* My Lords, we deſire he may be asked whether he acquainted Mr. *Cottingham* with what was in the Basket?

Mr. *Elde.* I did not.

Mr. Serj. *Pengelly.* After Mr. *Cottingham* came and acquainted you he had delivered the Basket, how long after that was it before you ſaw my Lord?

Mr. *Elde.* I did not ſee my Lord after that, tillI was ſworn in.

Mr. Serj. *Pengelly.* How long was that after?

Mr. *Elde.* I cannot be poſitive, but it was within a Day, either the ſame Day, or if not, it was the next Day after.

Mr. Serj. *Pengelly.* I deſire he may be asked, when Mr. *Cottingham* returned down Stairs after the Delivery of the Basket, what he ſaid to him about the Time of his being admitted?

Mr. *Elde.* I do not remember he ſaid any Thing to me about my being admitted. I tookthat for granted.

Mr. Serj. *Pengelly.* And when he was admitted, whether he was admitted in the Cloſet or in what Room?

Mr. *Elde.* When I was to be admitted, my Lord invited me to Dinner, and ſome of my Friends with me; and he was pleaſe to treat me and ſome Members of the Houſe of Commons in a very handſome Manner: I was after Dinner ſworn in before them.

Mr. Serj. *Pengelly.* I deſire to ask whether he had the Basket again?

Mr. *Elde.* Some Months after I ſpoke to my Lord's Gentleman, and deſired him if he ſaw ſuch a Basket, that he would give it me back; and ſometime after he did ſo.

Mr. Serj. *Pengelly.* Was any Money returned in it?

Mr. *Elde.* No, my Lords, there was not.

Mr. *Lutwyche.* There is one Thing in the Earl's Anſwer, that he retained only Part of the Preſent ſo made him by Mr. *Elde.* I perceive the Gentlemen of the other Side do not ask any Queſtions about it; if they do not we ſhall go on.

Sir *Wm. Strickland.* I deſire to know what Mr. *Cottingham* did ſay, after he had carried up the Basket and came down again?

Mr. *Elde.* To the beſt of my Remembrance, he ſaid nothing to me, but as I repeated it before, he intimated to me that he had delivered it to my Lord *Macclesfield.* I cannot ſay as to any particular Diſcourſe; but I underſtood that he had delivered it.

Mr. Serj. *Probyn.* My Lords, if they have done with Mr. *Elde*, I would beg Leave to ask him one Qneſtion, and that is in Relation to what the impeached Earl ſaid in his Anſwer, that he retained of the Preſent ſent him by the ſaid Mr. *Elde* no more than the Sum of 1850 *l.* We deſire therefore that he may be asked, how much was returned to him of the 5000 Guineas which he at firſt paid?

Mr. *Elde.* 3400.

Mr. *Weſt.* When was that returned again to him?

Mr. *Elde.* In *November* laſt, to the beſt of my Remembrance.

Mr. *Onſlow.* In what Manner was that Money returned to him?

Mr. Serj. *Probyn.* We have not yet done with him. I deſire to know when you went out of Town, and when you returned, and how long after your Return was it repaid?

Mr. *Elde.* It was repaid to me, to the beſt of my Knowledge, within three, four, or five Days after my Return. As ſoon as I came from the Country the Earl took Notice of it, and ſaid that he would repay me: For ſome Time in *May* before, or thereabouts, the noble Lord had taken Notice that he had received this Preſent from me, and he would make me exceedingly eaſy.

Mr. Serj. *Probyn.* This was before you went out of Town?

Mr. *Elde.* Before I went out of Town.

Mr. Serj. *Probyn.* When did you return to Town?

Mr. *Elde.* I returned the 19*th*, 20*th*, or 21*ſt* of *November*.

Mr. Serj. *Probyn.* How ſoon after you came to Town did you ſee my Lord?

Mr. *Elde.* Very ſoon after I came to Town?

Mr. Serj. *Probyn.* What Diſcourſe had you with him about it?

Mr. *Elde.* My Lord told me he would return me my Money again, he did not ſay all, but he would return me my Money; and that he had done it before, had it been convenient.

Mr. Serj. *Probyn.* How ſoon after this Diſcourſe was it, that the Money was returned?

Mr. *Elde.* I believe two or three Days.

Mr. *Onſlow.* If the Gentlemen have done, I deſire he may be asked in what Manner this Money was returned, and by whom?

Mr. *Elde.* After this Diſcourſe my Lord *Parker* ſent for me, my Lord Chancellor was then at *Weſtminſter-hall*, and told me my Lord Chancellor had deſired him to pay t ome 3400*l.* and he did pay it.

Mr. *Lutwyche.* My Lords, if I underſtand Mr. *Elde* right, he ſaid there was ſome Thing mentioned by my Lord of this Kindneſs before he went into the Country. I deſire he may be asked upon what Occaſion he was going into the Country at that Time?

Mr. *Onſlow.* I deſire that he may firſt anſwer in what Manner, by whom, and where, this Money was repaid to him, whether in Money, or Notes, or how?

Mr. *Elde.* To the beſt of my Remembrance it was paid in this Manner, there was 1400 *l.* in Bank Notes, and 2000 *l.* in *India* Bonds.

Mr. *Onſlow.* Who was this paid by?

Mr. *Elde.* By my Lord *Parker*.

Mr. *Onſlow.* Whether he gave any Receipt for the Money, or any Part of it, and to what Effect.

Mr. *Elde.* When my Lord paid me the Money, he ſaid my Lord *Macclesfield* had ordered me to be paid the Money; but his Lordſhip not having ſo much by him; therefore he had ordered him to make it up, and to pay me two thouſand Pounds out of his own Money; and that as 2000 *l.* of it was his own Money, he deſired me to give a Note of the Receipt of it.

Mr. Serj. *Pengelly.* Whether was that Note, a Note for Repayment of the Money, or a Receipt?

Mr. *Elde.* It was not for Repayment, that I remember, but it was an Acknowledgment

of the Receipt of the Money, that I had received ſo much.

Mr. Serj. *Pengelly.* Whether it did not contain a further Acknowledgment, for Repayment?

Mr. *Elde.* Not that I know of.

Mr. Serj. *Pengelly.* Was it ſaid upon whoſe Account the Money was paid?

Mr. *Elde.* Yes.

Mr. Serj. *Pengelly.* We deſire he may be asked, how many Days before he was to produce the Ballance of his Caſh before the Commiſſioners, that he received this Money?

Mr. *Elde.* I cannot ſay how long before, it might be a fortnight or three Weeks; I cannot ſay it was not long before.

Mr. Serj. *Pengelly.* Whether it was not neceſſary for him to make Uſe of this Money, in Order to make up this Ballance?

Mr. *Elde.* I will anſwer that Queſtion as well as I can: I did make Uſe of it to that Purpoſe as having it by me, but I was not ſo poor as to be put to a Neceſſity of ſo doing; I could have had the Money any where of any Body that knew me.

Mr. *Lutwyche.* My Lords, I deſire he may be asked, whether he can remember the particular Time to a Day, when it was repaid him?

Mr. *Elde.* Upon my Oath, I cannot tell the particular Time.

Mr. *Onſlow.* Was it after the Inquiry was directed to be made by the Lords of the Council?

Mr. *Elde.* Yes, my Lords, I was in the Country when the Inquiry was directed to be made, and a Month after.

Mr. *Lutwyche.* I mentioned a Queſtion before; Mr. *Elde* was mentioning that my Lord *Macclesfield* had ſaid to him before he went out of Town, that he would make him exceeding eaſy: I deſire he may be asked where he was then going, and upon what Occaſion?

Mr. *Elde.* My Lords, I was going into *Staffordſhire*, where the little Effects I have in the World lie.

Mr. *Lutwyche.* I would know upon what Occaſion?

Mr. *Elde.* I never miſſed going into the Country the Beginning of *Auguſt*, for theſe ten Years paſt.

Mr. *Lutwyche.* Whether there was any particular Occaſion for his going down into the Country at that Time?

Mr. *Elde.* If your Lordſhips are of Opinion that this is a fair Queſtion, I will as fairly anſwer it. I went down to my Houſe, to look into what little Affairs I had there. I called at *Stafford* firſt, and there declared myſelf a Candidate for the Election that was to enſue.

Mr. *Lutwyche.* We deſire he may be asked when he returned?

Mr. *Elde.* I returned about the *19th* or *20th* of *November*.

Mr. *Plummer.* Mr. *Elde* ſays, when my Lord *Parker* paid him he had a Note from him, acknowledging the Receipt of the Money: I deſire to know whether that Note was taken up again and when?

Mr. *Elde.* The Note I gave my Lord *Parker?*

Mr. *Plummer.* Yes.

Mr. *Elde.* My Lord *Parker* ſent for me and gave me the Note again. I do not know that I ſaw my Lord *Macclesfield* till after I had ſeen Lord *Parker*, and he had given me up the Note again.

Mr. *Plummer.* I deſire he may be asked, when the Note was delivered up to him?

Mr. *Elde.* That was asked before; I cannot tell the Day.

Mr. *Plummer.* It was never asked here before: The Queſtion I ask is, when the Note was delivered up?

Mr. *Elde.* I do not remember the Day.

Mr. *Plummer.* As near as you can?

Mr. *Elde.* In the Beginning of *December*.

Mr. *Sandys.* I beg leave to ask one Queſtion, he ſays that he applied this Money, which he received of my Lord *Parker*, towards making good the Ballance of his Accompt; whether or no, he did not firſt refuſe to ſwear to the Ballance of that Accompt; and what was the Occaſion of it?

Mr. *Elde.* When I had delivered in my Accompt, the Queſtion I was asked the firſt Time, was propoſed to me, not by any of the Judges who were appointed to inſpect our Accompts, but by Sir *Nathaniel Gould*, who propoſed it in ſuch a Manner, that I could not by any Means take it. He asked me, whether I owed any Thing, and I was to ſwear I owed nothing: I told him I could not ſwear any ſuch thing. I had ſome Arguments with him about the Abſurdity of ſuch an Oath, and ſaid, if I owe a Million of Money, that is nothing to the Purpoſe: There is the Money due on the Ballance of my Accompt, I deliver it to you, I laid the Money upon the Table, and inſiſted upon leaving it with them.

Mr. *Sandys.* Whether that Note was delivered to him after he refuſed to take the Oath?

Mr. *Elde.* It was.

Mr. *Sandys.* Whether that Note was not the Occaſion of his refuſing to take the Oath?

Mr. *Elde.* I cannot ſay but it was an Ingredient in it.

Sir *George Oxenden.* I would be glad to know where this Note is?

Mr. *Elde.* When my Lord *Parker* delivered it to me I lapt it up, and put it in my Pocket: My Lord asked me why I did ſo? I anſwered I would keep it as a Memorandum of my Lord Chancellor's Favour to me; but when I came home conſidering that it would be of no Service, and that it might be hazardous to keep it by me, I tore it.

Dr. *Sayer.* I deſire he may be asked whether he did not look upon himſelf intirely diſcharged from any Demand on Account of that Money, or did think himſelf bound to anſwer it?

Mr. *Elde.* I do not think myſelf bound to anſwer it.

Dr. *Sayer.* Whether he apprehends it to be a free and perfect Gift?

Mr. *Elde.* I do, my Lords.

Mr. *Cottingham* called again.

Mr. Serj. *Pengelly.* My Lords, we left the Basket in the Hands of Mr. *Cottingham*, therefore it is neceſſary that Mr. *Cottingham* inform your Lordſhips what became of it afterwards; what he did with the Basket, after he had it from Mr. *Elde?*

Mr. *Cottingham.* My Lords, I carried it up to my Lord, and ſet it down in his Study.

Mr. Serj. *Pengelly.* What did you ſay to my Lord?

Mr. *Cottingham.* Nothing. Mr. *Elde* ordered me to carry up the Basket, I carried it up, and there I ſet it down, I never ſaw it afterwards.

Mr.

Mr Serj. *Pengelly.* Whether do you remember what Anſwer my Lord *Macclesfield* made at that Time?

Mr. *Cottingham.* None that I remember.

Mr. Serj. *Pengelly.* Whether did he open the Basket?

Mr. *Cottingham.* No. The Basket was covered up, and I ſet it down in my Lord's Cloſet.

Mr. Serj. *Pengelly.* Whether after that Time he appointed any Time for Mr. *Elde* to be admitted?

Mr. *Cottingham.* I think he was admitted that very ſame Day.

Mr. Serj. *Pengelly.* I deſire this Witneſs may be asked, whether he received any Thing from Mr. *Elde*, beſides what was in the Basket?

Mr. *Cottingham.* Not a Farthing, except my Fees: Nor no more of any of the Maſters than my uſual Fees.

Mr. Serj. *Probyn.* We deſire Mr. *Cottingham* may be asked, whether at this Time, when Mr. *Elde* deſired to be admitted into this Office, there was any other Perſon who deſired it, or made any Offer for it?

Mr. *Cottingham.* Mr. *Lucas*, a Gentleman of the *Temple*, was recommended to the Earl by Mr. *Bulſtrode*, who is ſince dead. He had been formerly a Commiſſioner of the Exciſe; his Name was *Whitlock Bulſtrode.* Mr. *Lucas* did tell me upon that Occaſion, if the Earl would admit him, he would give him 6000 *l.* for the Office. I took a Memorandum of it at that Time, and I had it in my Hands four or five Days ago.

Mr. Serj. *Probyn.* When Mr. *Lucas* told you this, whether did you inform the then Lord Chancellor of it?

Mr. *Cottingham.* Yes, I am ſure I did; and the Anſwer he made me was, that Mr. *Elde* was of a Family which were his particular Friends and Acquaintance, for whom he had a great Friendſhip and Value, and that he ſhould have it 1000*l.* cheaper, or leſſer than any Body elſe.

Mr. *Strange.* I deſire he may be asked, whether before Mr. *Elde* was admitted, he did not acquaint the noble Lord, that this Mr. *Lucas* would give 6000 *l*?

Mr. *Cottingham.* Yes, I did.

Mr. Serj. *Pengelly.* I deſire to know whether I underſtand Mr. *Cottingham* right? He ſays, that my Lord would let Mr. *Elde* have it cheaper than any Body elſe: Whether he underſtood by that, that my Lord expected ſome Body elſe would give him more?

Mr. *Cottingham.* My Lord ſaid he would let Mr. *Elde* have it upon the Score of particular Friendſhip and Acquaintance.

Mr. Serj. *Pengelly.* If I heard him right, I ſubmit it to your Lordſhips, whether he did not ſay that Mr. *Elde* ſhould have it 1000 *l.* cheaper than any other Perſon. I ask whether he did not underſtand my Lord *Macclesfield* would have 1000 *l.* more from any other Perſon?

E. of *Macclesfield.* My Lords, I hope I am not to be charged with the Imaginations of this Gentleman; he is asked about his Apprehenſion of my Intention in a Caſe that did not happen. I deſire he may be asked, if he knew what Character Mr. *Elde* had?

Mr. *Cottingham.* A very good one.

E. of *Macclesfield.* I deſire it may be asked, whether he did not know that I had a great Opinion of Mr. *Elde*'s Ability and Integrity?

Mr. *Cottingham.* He was one your Lordſhip had a great Opinion of, and that he was very deſerving. I never heard your Lordſhip expreſs a better Opinion of any Man than of Mr. *Elde.*

Mr. Serj. *Pengelly.* We have done with this Article: The next Article is the 8th. We deſire Mr. *Thurſton* may be ſworn.

Mr. *Mark Thurſton* ſworn.

Mr. Serj. *Pengelly.* My Lords, we deſire that Mr. *Thurſton* may give your Lordſhips an Account when he was admitted into one of the Offices of the Maſters in *Chancery*, and upon whoſe Death?

Mr. *Thurſton.* My Lords, I was admitted into this Office upon the Death of Mr. *Borret*, and the Day of my Admiſſion was the 5th of *Auguſt* laſt.

Mr. Serj. *Pengelly.* I deſire he may be asked, whether before his Admiſſion he had made any Application either to my Lord *Macclesfield* or his Secretary, or any Perſon concerned for him?

Mr. *Thurſton.* My Lords, before my Admiſſion, I did make ſome Application to my Lord Chancellor's Secretary Mr. *Cottingham*; and at that Time I made a Propoſal of making a Preſent of 5000 Guineas, to be admitted into the Office. Mr. *Cottingham* asked me ſeveral Queſtions about my Circumſtances, and what Perſons I could name that would recommend me to his Lordſhip: To which I gave the proper Anſwers, and mentioned ſeveral Gentlemen he knew. After that, I having the honour of being acquainted with my Lord Commiſſioner *Gilbert*, before I took any other Steps, I waited on his Lordſhip, and acquainted him with my Reſolution, and begged the favour of him, that he would take the Trouble to recommend me to my Lord Chancellor, as his Friend, and a fit Perſon for the Office. His Lordſhip did take that Trouble, and waited upon my Lord at *Weſtminſter*, who was then ſitting upon the Bench; and after Notice was ſent him of that Gentleman's being in the little Room behind, his Lordſhip came off the Bench; and ſome Time being ſpent in Converſation between them, I was called in, and kindly recommended by that honourable Perſon; and my Lord *Macclesfield* ſeemed to approve of me upon his Recommendation. But I ſhould acquaint your Lordſhips, that as to that Part of the Tranſaction with Mr. *Cottingham*, he ſaid that he would report theſe Things to my Lord *Macclesfield*, of my Character and Perſon, though he never reported any Thing back to me again upon it: But I took the next enſuing Steps, by the Intervention of the honourable Gentleman my Lord Commiſſioner *Gilbert.*

Sir *Will. Strickland.* Whether he did not underſtand, that my Lord *Macclesfield* agreed to his Propoſals?

Mr. *Thurſton.* Yes.

Sir *Will. Strickland.* After this Tranſaction with Mr. *Cottingham*, what further Application was made? And why he was not immediately admitted at that Time?

Mr. *Thurſton.* It was not expected by me to be immediately admitted at that Time: Becauſe my Lord Chancellor did not abſolutely determine me to be the Perſon; but ſaid he had ſo good a Character of me, that he believed I ſhould be the Man.

Sir *Will. Strickland.* Whether Mr. *Thurſton*, being uneaſy about the delaying of admitting him, did apply to any other Perſon afterwards?

Mr. *Thur-*

Mr. *Thurſton.* After my being introduced to my Lord Chancellor, there was ſome Time for my Lord's Conſideration. Near a Week after, a Meſſage was ſent me by Mr. *Cottingham*, that my Lord would be ready to admit me ſuch a Day. Before the Day came, I had a Meſſage contradicting it, upon my Lord Chancellor's being engaged to attend the Council on that Day. After that, I expected the Appointment of another Day for that purpoſe; and in the mean Time this Affair had got into the publick News-Papers, as every Thing does, and I was named by every Body to be the Perſon fixed upon; and People reſorted to me to tranſact the Buſineſs of the Office, which I could not do without being duly admitted. And ſhortly after that Time, there was a Report ſpread, that my Lord Chancellor had deſigned to make a Preſent of the Place to ſome Gentleman in the Country, which gave me an Uneaſineſs, and put me upon an Expedient, that ſince I could not have ready Acceſs to ſo great a Perſon as his Lordſhip, I went to *Kenſington* one Morning to wait upon the Counteſs of *Macclesfield*; and upon ſending up my Name, and that I deſired to ſpeak with her, in a ſhort Time I had the honour of ſeeing her, and acquainted her that I was the Perſon that my Lord had promiſed the Office to, and that I could not proceed therein without being ſworn; therefore I deſired her Ladyſhip to interceed with my Lord, that I might be ſpeedily ſworn in. Her Ladyſhip ſaid, ſhe never did meddle in any Affairs of a publick Nature. I uſed ſeveral Arguments with her, as that the Thing was now publick and in Print, that it might be a great Diſappointment to me, and might affect my Character, if my Lord did not think fit to admit me. I laid a good deal of Streſs upon theſe Arguments, and I acquainted her Ladyſhip that I did not expect or deſire to come in without the due Preſent that is always eſteemed the Perquiſite of the great Seal. Then I repeated thoſe other Arguments again, that my Character might be affected by theſe Diſapointments; whereby her Ladyſhip was prevailed upon to promiſe ſhe would write a Letter, and acquaint my Lord Chancellor with it. Before I went away from the Room where I had the honour to be with the Lady, I did leave upon the Table Bank Notes to the Value of 5250 Pounds.

Mr. Serj. *Pengelly.* How were they directed?

Mr. *Thurſton.* I directed them to the Counteſs of *Macclesfield.*

Mr. Serj. *Pengelly.* I deſire he may be asked, how ſoon after this he was admitted?

Mr. *Thurſton.* I believe it was within 2 or 3 Days after at fartheſt, that I was admitted and ſworn into this Office.

Mr. Serj. *Pengelly.* We deſire he may give your Lordſhips an Account who was his Predeceſſor?

Mr. *Thurſton.* Mr. *Borret*, as I acquainted your Lordſhips before.

Mr. Serj. *Pengelly.* We deſire he may acquaint your Lordſhips of the State of the Office as it came into his Hands. What was the Deficiency of the Office, due to the Suitors of the Court, not anſwered by the Effects of Mr. *Borret*, when it came into your Hands?

Mr. *Thurſton.* That is a Queſtion I can't poſſibly anſwer, becauſe I never had thoſe Accompts under my Inſpection. And I dont find the Gentlemen that have, can give an Accompt of it.

Mr. Serj. *Pengelly.* I do not ask to a particular Sum; but whether there was a Deficiency, any Deficiency, and about what Sum?

Mr. *Thurſton.* I do not know any Thing at all about the Matter: I might as well gueſs what a Gentleman is worth that I know nothing of.

Mr. Serj. *Pengelly.* Whether there were Effects ſufficient to anſwer all the Suitors Demands?

Mr. *Thurſton.* I cannot tell; becauſe there was not any particular or exact Accompt taken of it, that is come to my Knowledge.

Mr. Serj. *Pengelly.* Whether the Suitors have been paid the Money left, or depoſited by them in the Hands of Mr. *Borret*?

E. of *Macclesfield.* My Lords, if there be any Order of the Court for their being paid, it will appear, and they may produce thoſe Orders to your Lordſhips: How can they pay without any Order?

Mr. Serj. *Pengelly.* I do not ſpeak of Orders, I only ask whether he knows that the Suitors have been paid?

Mr. *Thurſton.* It is impoſſible for me to have any Knowledge of it, for the Reaſons I gave you before; having had no Inſpection of thoſe Accompts.

Mr. *Lutwyche.* I deſire he may be asked, whether any Effects, or Money, or Caſh, and to what Value, have been transferred to him, as the Effects of Mr. *Borret*?

Mr. *Thurſton.* About 4200 *l.*

Mr. *Lutwyche.* Whether he knows what the Caſh was, that was in Mr. *Borret's* Hands?

Mr. *Thurſton.* No, my Lords, I do not know.

Mr. Serj. *Pengelly.* I deſire he may be asked, whether he has been applied to by any of the Suitors of the Court, upon the Account of Money depoſited in Mr. *Borret's* Hands?

Mr. *Thurſton.* I cannot ſay no Body has applied to me for Money due in Mr. *Borret's* Office, ſeveral Suitors or their Repreſentatives have been inquiring after ſuch Things, who have been ſatisfied with having ſuch an Anſwer as the preſent Circumſtances would furniſh. There were ſome Sums of Money before this broke out paid to Suitors, that was Intereſt Money, and who were repreſented to me as People in Neceſſity, to the amount of 3 or 400 *l.* When this broke out, I then deſiſted Payment, upon the Advice of a great Friend.

Mr. *Lutwyche.* I deſire he would explain himſelf, what he means by ſaying before this broke out?

Mr. *Thurſton.* What I mean was, the Inquiry made into the Maſters Accompts, by his Majeſty's Direction in Council.

Mr. *Lutwyche.* The Sum of Money he paid, I deſire he may be asked who he received that Sum from?

Mr. *Thurſton.* I received it from Mr. *Godfrey*, the Maſter in *Chancery.*

Mr. *Lutwyche.* I deſire he may be asked, whether he knew of any Adminiſtration taken out to Mr. *Borret*, and at what Time?

Mr *Thurſton.* I believe Mr. *Godfrey* and Mr. *Bennet* were deſired to take that Trouble upon them, to look into Mr. *Borret's* Affairs, by the Lord Chancellor; which they proceeded and took ſome Steps in, till

till they were discouraged from it by the Enquiry that was set on foot. They tell me now, that Administration is granted to Mr. *Paxton*.

Mr. Serj. *Pengelly*. I desire he may inform your Lordships, since he paid the Interest, why he did not pay the Principal?

E. of *Macclesf*. I believe it would save your Lordships time, if Mr. Serjeant would ask his Questions in such a manner, as not to imply something which was not admitted, or said by the Witness. The Question supposes a principal Sum demanded; the proper Question is, first to ask if any principal Sum was demanded, and whether it was, or was not paid.

Mr. Serj. *Pengelly*. I apprehend that Mr. *Thurston* says, That Creditors came to him, Suitors of the Court, and he could not pay any more than the Interest; therefore I apprehend they came to him for the Money lodged in the Hands of Mr. *Borret*. Therefore I desire he may be asked, whether any of those Persons that demanded their Money were paid?

E. of *Macclesf*. I desire he may be asked, whether any demanded the principal Sum? and by what Order?

Mr. Serj. *Pengelly*. I desire to ask my own Questions; I apprehend I am not to be directed in the asking my Questions by the Lord impeached. I desire to ask what Suitors applied, and what Sums they demanded?

Mr. *Thurston*. The Names of the Suitors I can't recollect, I believe it is not necessary to trouble your Lordships with them. The Sums demanded were only Interest Money. The principal Sum, for which I paid the Interest, to the best of my remembrance, was 700*l*. There was no Demand made of principal Money to be paid. But there might be Enquiries made, I believe, by a noble Peer of this House, which I was so very unfortunate, that I could not inform his Lordship of the State of what he enquired after.

Mr. *Plummer*. Mr. *Thurston* says, he desisted from paying any further Sums, upon very good Advice; I desire to know why, or by whose Advice, he desisted paying?

Mr. *Thurston*. It was upon a prudential Reason I did desist; because when a publick Inquiry was set on foot, I did not know how far I might be affected, in being made answerable my self for it.

Mr. *Plummer*. Whether he had any Suspicion that there was a Deficiency in Mr. *Borret's* Office?

Mr. *Thurston*. There was a Suspicion that there was not competent Money to satisfy all the Suitors Demands.

Mr. *Lutwyche*. I desire he may be asked, whether there was not an Order for transferring the Effects in Mr. *Borret's* Hands to him?

Mr. *Thurston*. Upon the Admission of Mevery after, there is an Order of Course signed by the Lord Chancellor, to transfer the Effects to the Successor.

Mr. *Lutwyche*. I ask if any such Order came to him?

Mr. *Thurston*. There did, my Lords.

Mr. *Lutwyche*. Was there any Transfer of the Effects according to that Order?

Mr. *Thurston*. No, there was not a compleat Transfer.

Mr. *Lutwyche*. Why was it not, as usual in the Case of other Masters, that either are removed, and are able to transfer; or in case, upon Death, where their Representatives are able to do it?

Mr. *Thurston*. The Reason it was not done, I conceive, was because it was impracticable, there being no Representative of my Predecessor, no Administration being taken out.

Mr. Serj. *Pengelly*. I desire he may inform your Lordships, whether he was not applied to by a noble Peer of this House concerning some Effects deposited in the Hands of Mr. *Borret*, and what account he then gave him of the State and Situation of the Office?

E. of *Macclesf*. I am really very sorry to trouble your Lordships so often. What is it to me what this Gentleman said? He is now upon his Oath, and to give to your Lordships an Account what he knows; but to ask him what he said at such a time, to affect me, I hope they will not insist upon it.

Mr. Serj. *Pengelly*. When he has declared what he said, then there will be another Question, Whether that was true in Fact? And that Question will then affect the impeached Lord.

E. of *Macclesf*. If Mr. Serjeant will ask a proper Question first, he may; but he should not ask an improper Thing, because he will ask a proper Question afterwards.

Mr. Serj. *Pengelly*. We apprehend it is proper Evidence to be given, that he gave such an Account of the Office in answer to the noble Lord: Therefore I desire to know what Account he gave to that noble Lord?

E. of *Macclesf*. My Lords, I humbly oppose that Question, and desire your Lordships Judgment, whether he is to ask what this Person said?

Mr. *Lutwyche*. I believe the same End may be obtained by asking a Question without Dispute, and to which there can be no Objection; that is, Whether or no he had any Reasons to think that there was a Deficiency in the Office, and what those Reasons were?

Mr. *Strange*. My Lords, we beg leave to oppose that Question: What his private Opinion may be, is no Evidence; he and another may think variously of the same Matter. They are to ask him as to Fact, and not to his Opinion.

Mr. *Plummer*. I have not had the Happiness to be bred a Lawyer, and therefore may be mistaken as to legal Evidence: But surely when your Lordships are examining a Person to the Deficiency of his own Office, none can give a better Account than himself. I desire he would answer what he knows, whether he had the compleat Money of Mr. *Borret's* transferred to him?

Mr. *Thurston*. The compleat Money of the Office hath not been transferred to me, and for the Reasons I have mentioned to your Lordships; for want of an Administration.

Sir *W. Strickland*. I would beg leave to ask Mr. *Thurston* one Question, and I hope a material one; Whether, on his Admission into that Office, he did not find a great Confusion in it?

Mr. *Thurston*. I can't say that upon my Admission into that Office I found great Confusion in it, because all Papers that came within my View were very regular, and well adjusted to dispatch Business upon.

Sir *W. Strickland*. I desire he may be asked, whether, if he had known the State of this Office, he would have given five thousand Guineas for it?

Mr. *Thurston*. If I had known the State of the Office, and the Consequences of it, as appear at

this time before your Lordships, rather than have given 5000 *l.* for it, I would have given 5000 *l.* to have been without it.

Mr. Serj. *Probyn.* Of the Money he paid or left at the time he mentions, on my Lady *Macclesfield*'s Table, I desire to know if he received any of it back again?

Mr. *Thurston.* I received back again from the Lady *Macclesfield* the Sum of 3250 *l.* in Bank-Notes, the same as I enclosed, when I first left it.

Dr. *Sayer.* Do you know the particular Circumstances of that Transaction, and upon what Occasion the Money came to be return'd? Give a full Account of that whole Transaction.

Mr. *Thurston.* Soon after my Admission, and as soon as I could adjust the Affairs of my Office, it being the latter End of Summer, and little Business stirring, I went into the Country for my Health. The Servant I left in Town, sent me word, that there were several Messages from my Lord Chancellor, that he supposed might be of Importance. As soon as I could conveniently, I returned to *London*, and in a Day or two went my self to my Lord Chancellor's House, and I sent to know what the Occasion of those Messages was. They said, it was not from my Lord Chancellor, but it was a Message from my Lady *Macclesfield.* Upon that I immediately after waited upon her Ladyship. She informed me then, that she did not know that I had left so large a Present with her, as she found it was: And declaring I should be used with Honour, she returned to me 3250 *l.* and the other part she said she would appropriate to her own use.

Mr. Serj. *Probyn.* We desire Mr. *Thurston* may be asked, if there was any notice taken of any Order or Directions from my Lord Chancellor about re-payment of the Money? or whether it was only a Transaction between him and my Lady *Macclesfield?*

Mr. *Thurston.* There was no notice taken of any Orders from my Lord Chancellor; rather an express Desire that my Lord Chancellor should never be acquainted with it.

Mr. *Strange.* I would ask when this Money was restored?

Mr. *Thurston.* The time when the Money was restored, was about the Middle of *October.*

Mr. *Com. Serj.* I desire he may be asked, whether at the time he first applied to Lady *Macclesfield,* he laid down the Paper those Bank Bills were in on the Table, before he received any Answer from my Lady, or afterwards?

Mr. *Thurston.* I laid down the Bank Bills on the Table, to the best of my Remembrance, at the time of my coming away, and taking leave.

Mr. *Com. Serj.* Whether they were inclosed in a Paper?

Mr. *Thurston.* They were inclosed in a Paper, and also sealed up.

Mr. *Com. Serj.* Whether they were opened during the time he was there?

Mr. *Thurston.* No, they were not.

Mr. *Com. Serj.* Or taken up by my Lady during that time?

Mr. *Thurston.* No, my Lords, I don't remember they were.

Mr. *Com. Serj.* Whether he named the particular Sum to her Ladyship?

Mr. *Thurston.* No, my Lords, not in the least. I did not give any Intimation what Sum was inclosed.

Mr. *Strange.* I desire he may be asked, whether he can remember that my Lady did or did not open it, before he went away?

Mr. *Thurston.* To the best of my Remembrance it was not opened, before I went out of the Room.

Mr. *Strange.* I desire he may be asked this further Question, whether he apprehended that my Lady *Macclesfield* was acquainted with the Contents, till after he was gone?

Mr. *Thurston.* I did not apprehend that my Lady *Macclesfield* was acquainted with the Contents of it, till afterwards.

Mr. *West.* Since that Gentleman hath asked concerning his Apprehension, I desire he may be asked another Question of the same kind, which is, Whether he apprehended he should have been admitted, if he had not left the Money?

Mr. Serj. *Probyn.* We submit it to your Lordships, whether that be a fair Question.

Mr. *West.* Really I think it is a proper Question, upon the Foundation of the Question asked before. The former Question was, whether he apprehended my Lady knew what he had left? I ask, whether he apprehended he should have been admitted, if he had not left that Sum?

Mr. *Thurston.* I do not apprehend, that if I had come without the Money, I should have been admitted. But if the Notes had been return'd to me without any other Answer, then I should fully have apprehended that I should not have been admitted.

Sir *John Rushout.* I desire he may be ask'd, whether he had any particular Acquaintance with the Lady *Macclesfield* before?

Mr. *Thurston.* I had not that Honour.

Sir *John Rushout.* Whether he had ever seen her, or been in her Company before?

Mr. *Thurston.* My Lords, I believe I never was.

Sir *John Rushout.* My Lords, we desire he may be ask'd what he apprehends was the Reason of 3250 *l.* being return'd to him?

Mr. *Thurston.* I know not whether I should trouble your Lordships with my Apprehensions, they may not be just; but so far as I could collect from the Lady's Discourse, the Reason was, she thought it too large a Present.

Mr. Serj. *Pengelly.* I desire he may be ask'd, when the 3250 *l.* was return'd, in what Month it was?

Mr. *Thurston.* It was in *October.*

Mr. Serj. *Pengelly.* Whether he can recollect in what time of the Month?

Mr. *Thurston.* I believe it was about the middle of *October,* to the best of my Remembrance.

Dr. *Sayer.* My Lords, we desire he may be ask'd, whether the return of this Money was before or after the then first Seal before *Michaelmas* Term?

Mr. *Thurston.* To the best of my Remembrance, the first Seal was about the middle of *October,* and it was return'd before the first Seal.

Mr. Serj. *Probyn.* My Lords, I desire he may be ask'd, whether there was any Message sent about the returning of the Money, before the Return was made?

Mr. *Thurston.* I have acquainted your Lordships that several Messages past, while I was in the Country.

Mr. *Robins.* When he waited upon my Lady *Macclesfield,* after his Return out of the Country, I desire he may be ask'd, whether she mentioned any Thing to him of the Reason of those Messages?

Mr. *Thurston.*

Mr. *Thurſton.* She mention'd the Reaſon, and ſaid that it was to return the Money, which ſhe ſaid was too large a Preſent, and that ſhe was afraid my Lord Chancellor ſhould come to the knowledge of it.

Mr. Ser. *Probyn.* I deſire he would inform your Lordſhips, when he went to *Kenſington* to my Lady *Macclesfield*, where my Lord *Macclesfield* was?

Mr. *Thurſton.* When I went to *Kenſington* to my Lady *Macclesfield*, my Lord *Macclesfield* was then engag'd in the Buſineſs of the Court of Chancery, at the latter end of the Sittings, or firſt Seal after *Michaelmas* Term.

Mr. Ser. *Probyn.* In what ſtate of Health was my Lord Chancellor at that time? Had he not continued ſome time before at *London*, and not at *Kenſington?*

Mr. *Thurſton.* My Lord Chancellor, by the Enquiry I made, was at that time in *London.*

Mr. Ser. *Probyn.* How ſoon after your Admiſſion did the Lord Chancellor go into *Oxfordſhire?*

Mr. *Thurſton.* The very Day after my Admiſſion, my Lord Chancellor went into *Oxfordſhire*, as I was informed by one of my Lord's Officers, who came to me that Day upon ſome Buſineſs.

Mr. *Cottingham* again call'd.

Mr. Serj. *Pengelly.* My Lords, I deſire Mr. *Cottingham* may be ask'd, whether upon the Propoſal of 5000 Guineas made to him by Mr. *Thurſton*, he acquainted my Lord *Macclesfield* with it?

Mr. *Cottingham.* I acquainted my Lord Chancellor with the Propoſal made by Mr. *Thurſton* of 5000 Guineas.

Mr. Serj. *Pengelly.* Whether did he approve of it, or reject it?

Mr. *Cottingham.* I am not very certain, whether the Earl did not ſay he would take time to conſider of it. But in the main, according to my Apprehenſion, the Earl ſeem'd to approve of it.

Mr. Serj. *Pengelly.* I deſire he may be ask'd, whether he receiv'd any thing for my Lord *Macclesfield*'s Uſe upon Mr. *Thurſton*'s Admiſſion?

Mr. *Cottingham.* No my Lords, I receiv'd nothing but my own Fees.

Mr. Serj. *Pengelly.* If he received nothing, whether he received any Directions from my Lord Chancellor, relating to his receiving, or not receiving any thing from him?

Mr. *Cottingham.* The Earl was pleaſed to tell me, he had a Deſign to have given that Place to Dr. *Sayer*, but he was at that time in the Country, out of Town, at *Durham:* He proceeded ſo far as to order me to take no Money of Mr. *Thurſton.*

Mr. Serj. *Pengelly.* When was that?

Mr. *Cottingham.* Very ſoon before he was admitted.

Mr. Serj. *Pengelly.* My Lords, we ſubmit this as Evidence of the Lord's knowing of the Receipt of this Preſent of 5000 Guineas.

Mr. *Lutwyche.* My Lords, I deſire to know of Mr. *Cottingham*, whether my Lord *Macclesfield* had any acquaintance with Mr. *Thurſton* before this Propoſal?

Mr. *Cottingham.* I can't ſay as to that, whether he had or had not; I believe he had not, as I apprehend.

Mr. *Plummer.* I deſire he may be ask'd one Queſtion, whether he made any difficulty of accepting his Fees on Mr. *Thurſton*'s Admiſſion?

Mr. *Cottingham.* Yes I did.

Mr. *Plummer.* And why?

Mr. *Cottingham.* The Earl ordered me to take no Money of him. Upon that general Order I made a little difficulty, and told him of it; the anſwer he made me was, why ſhould I make any difficulty when he had been thus generouſly dealt with by my Lord Chancellor?

Sir *W. Strickland.* Whether at that time, when he firſt mention'd the 5000 Guineas, it was not a Day or two before his Admiſſion?

Mr. *Cottingham.* I believe it was a Day or two before his Admiſſion.

Mr. Serj. *Pengelly.* My Lords, we have done with Mr. *Cottingham*; ſince the name of Dr. *Sayer* is mentioned on this Occaſion, whom the noble Earl declared he would compliment with the Place that fell vacant, I deſire this Witneſs may be asked, whether that was a real Compliment to Dr. *Sayer*, or whether Dr. *Sayer* made any Application, or was to give any Thing for it?

Mr. *Cottingham.* I believe, if Dr. *Sayer* had been then in Town, my Lord would really have made him a Compliment of it without any Preſent. My Lord told me Dr. *Sayer* was his particular Friend, and he had a great Value and Reſpect for him.

Mr. *Plummer.* My Lords, I beg leave to ask a Queſtion upon that Queſtion. He ſays he thought my Lord *Macclesfield* would have given it him for nothing; I ask him if he then thought he gave it Mr. *Thurſton* for nothing?

Mr. *Cottingham.* The Anſwer I can make to that Queſtion is, that I did not apprehend my Lord was ſo well acquainted with Mr. *Thurſton*, as to give it him for nothing.

Dr. *Sayer.* I deſire he may be ask'd, whether he did not repreſent to the Earl of *Macclesfield*, that there was a neceſſity for the immediate putting a Maſter into that Office, for the diſpatch of Buſineſs?

Mr. *Cottingham.* I did repreſent it to the Earl, that it was neceſſary to put ſomebody into the Office, for ſeveral Practicers had been with me about their Affairs in that Office, and otherwiſe the Buſineſs might be transferred to another Office, which would have been a great Prejudice. Upon that the Earl ſaid Mr. *Thurſton* ſhould be admitted.

Mr. Serj. *Probyn.* Whether you had not Application from the Suitors themſelves, and whether there was not a Clamour from them on account of the ſtop it put to Buſineſs?

Mr. *Cottingham.* Yes there was; it happened to be in the long Vacation, and ſomething I told the Earl muſt be done, there was an abſolute Neceſſity to come to ſome Reſolution or other in the Matter.

Mr. Serj. *Pengelly.* In this Article, as an Aggravation, it is alledg'd, that Mr. *Borret* died inſolvent: We beg leave to call ſome Witneſſes to give an Account of the State of the Office at his Admiſſion, and afterwards at the time of his Death.

Mr. *Meller* called.

Mr. Serj. *Pengelly.* My Lords, we deſire Mr. *Meller* may be ask'd, what Sums in Caſh and Effects he delivered over to Mr. *Borret*, at the time of his coming into the Office?

Mr. *Meller.* My Lords, I take it to be about 120000*l.* I refer myſelf to the Account given in

to

to the Judges, and Directors of the Bank, and ſigned by my Hand.

Mr. Serj. *Probyn.* My Lords, we ſubmit it, whether this is regular, to examine to an Accompt *Viva Voce*, which Accompt hath been reduc'd into writing?

Mr. Serj. *Pengelly.* Surely the Witneſs may make uſe of his own Paper to refreſh his Memory.

E. of *Maccleſ.* I don't know what theſe Gentlemen intend. They are reading a Charge againſt Mr. *Borret*, to ſhew what was delivered over to him, at the time he came into the Office. Is it expected I ſhould be able to give an Account what was paid to him, or by him, while he was Maſter? that I ſhould give an account of his Eſtate, and Effects, what it is, and if there was ſufficient to pay in his Hands, or not? If theſe Gentlemen had any Order of the Court, in which this had been fixed and ſettled, that might have been ſomething. It is impoſſible for me to enter into it.----- It appears he died inteſtate, Adminiſtration was not granted till a great while after his Death; not till very lately: What account hath been taken of his Effects I don't know, nor can any way ſhew. They are beginning with an Account which I apprehend is not a proper Evidence to be given as againſt me, to prove that this Gentleman had not Effects ſufficient to anſwer the Demands upon his Office.

Mr. Serj. *Pengelly.* My Lords, This Evidence relates to an Accompt delivered in by the Approbation of the Lord impeached, on the Enquiry made before the Lords of the Council. As this Accompt was delivered in before them, we apprehend ſo far it is a proper Evidence, and a Foundation for a farther Enquiry, how much of it remains in the Office: We ſhall ask other Perſons afterwards as to the Deficiency. All the uſe we now make of it, is, to ſhew the groſs Sum that was at firſt transferred over to him.

E. of *Maccleſ.* My Lords, If they mean only to ſatisfy your Lordſhips Curioſity, by ſhewing how great a Sum there was in that Office, I think it is of no great Importance.

Mr. *Lutwyche.* All that we endeavour to prove now, is, what was very notorious at the time of Mr. *Borret*'s Death; that there was a great Deficiency, and that he died inſolvent, and the Earl goes a great way in this matter in his own Anſwer. He ſays in his Anſwer, That on the Death of Mr. *Borret*, he deſired Mr. *Godfrey* and Mr. *Bennet* to enquire into his Effects, and to enter a proper Caveat in the Prerogative Court, to prevent Adminiſtration being granted to any Perſon who might embezzle the ſaid *Borret*'s Eſtate, and to obtain Adminiſtration to be granted to them for the benefit of the Suitors of the Court. This goes a good way, I apprehend, to incline your Lordſhips to believe, that there were thoſe Steps uſed, which are unuſual in the caſe of a Man's Solvency. Therefore what we would ask to, is, that the Witneſs would give an account of what he knows concerning the Deficiency in this Office, or give an account of ſuch Circumſtances, as may induce your Lordſhips to believe there was ſuch a Deficiency.

Mr. *Com. Serj.* If the Gentlemen who appear on the behalf of the Houſe of Commons think fit to rely upon our Anſwer, they may do it.

Mr. *Sol. Gen.* I think Mr. *Meller* hath proved that he transferred 120,000 *l.* to Mr. *Borret*; we will now go on and prove the Deficiency.

Mr. *Com. Serj.* Mr. *Meller* hath ſpoke *Viva Voce*, in a matter which we apprehend is capable of much better Proof; therefore we hope what he has ſaid ſhall not go for Evidence. There muſt have been a Schedule, and he has the counterpart of that Schedule, by which the Effects were deliver'd over.

Lord *Trevor.* Mr. *Meller* hath a Paper in his Hand, I deſire to know what that Paper is?

Mr. *Meller.* The Paper I have before me is the very Account of the Money delivered to Mr. *Borret*, and the ſeveral Times when; it is made by way of Schedule. There is another Paper by way of Abſtract. I drew them together at the time I delivered it to the Judges: I had not time to draw out the full Account, and therefore I made an Abſtract, both which are ſigned.

E. of *Maccleſ.* The noble Lord asked the Queſtion exceeding proper. The Queſtion asked is, What this Paper was? Perhaps it is the very Accompt Mr. *Borret* and he made up between them, and ſigned. I ask therefore, Whether it is the Accompt between them, or whether it is an Accompt of his own drawing up ſince?

Mr. *Meller.* This is the Accompt I drew up from my Books, of which Mr. *Borret* had a Duplicate. I verified all theſe *Items*, and likewiſe proved the Payment of the Money by Goldſmiths and Bank Notes.

Mr. *Sol. Gen.* We apprehend that this is as full Evidence as can be laid before your Lordſhips.

Mr. *Serj. Probyn.* We ſubmit it, whether your Lordſhips are of Opinion that this is proper Evidence. Mr. *Meller* hath been propoſing a Paper, which is not the original Accompt delivered; it is not the Book, but a Copy of the Book taken out, and given in Evidence in another Place: Now he would by this Evidence, ſigned by himſelf, charge Mr. *Borret* with Money deliver'd over to him; but as it is an Accompt only ſigned by Mr. *Meller*, we ſubmit it, whether it can be a Charge upon the Repreſentative of *Borret*, and conſequently if it can be any Evidence at all?

Mr. *Serj. Pengelly.* We beg leave to inſiſt upon it as proper Evidence. When a Perſon makes up an Accompt of his own Hand Writing, and draws it up, and ſwears that to be a true Accompt upon his own Knowledge, whether this is not proper Evidence?

E. of *Maccleſ.* This Gentleman has really given his Evidence, though it was objected to: It will be a proper Enquiry hereafter, when we come to conſider the Evidence that hath been given, whether it be good Proof of what it is brought for?

Dr. *Sayer.* We ſhall reſerve our Objection to the laſt.

Mr. *Sol. Gen.* They may reſerve what Obſervations they pleaſe; it is an Objection to be made now, or not at all.

Lord *Lechmere.* It would be of ſome Service to prevent miſpending your Lordſhips Time, if the noble Lord would diſtinguiſh between Objections and Obſervations; for a great deal of Time has been taken up in Obſervations on Evidence, which are proper afterwards on the Defence.

Mr. *William Thompſon* called.

Mr. *Serj. Pengelly.* Mr. *Thompſon* is one of the Gentlemen, who by the conſent of the Lord within the Bar, as well as of the reſt of that Committee, did examine into the Accompts of the Maſters in Chancery; and we beg leave to ask him, In the Accompt delivered in before the noble Lord himſelf

ſelf, what appeared to be the Deficiency upon Mr. *Borret*'s Account?

E. of *Maccleſ.* If it does appear by thoſe Accounts, thoſe Accounts may be produced before your Lordſhips, and your Lordſhips may be Judges; but I beg they may not inſiſt upon this Gentleman giving his Opinion, in order to affect me with his Collections or Inferences upon them.

Mr. *Sol. Gen.* The Original Accompts are here. They are on your Lordſhips Table. It will be proper to examine this Gentleman as to that.

Mr. *Plummer.* I beg leave to make one Obſervation, and I believe it may prevent my ſpending your Lordſhips time. They make an Objection to this Evidence, as if your Lordſhips were going to try how the Deficiency was made up; whereas your Lordſhips are only trying whether there was or was not a Deficiency.

E. of *Maccleſ.* If the Accompts are before your Lordſhips, and lye upon your Lordſhips Table, and he only declares to your Lordſhips his Obſervations on thoſe Accompts, for your Lordſhips Eaſe, and to ſave you ſome Trouble, I have no Objection to it.

Mr. Serj. *Pengelly.* Upon the ſtating the Accompt, which we apprehend is a matter of Evidence, when a Gentleman computes the Sum on one Side, and the Sum on the other Side, we deſire to know what appears to Mr. *Thompſon* to be the Deficiency?

Mr. *Thompſon.* I can't rely upon my Memory for the Sum, but I have in my Hand a Report made to the Committee of Council, that I ſigned with my Name; by which it appears, that Mr. *Meller* at ſeveral times, paid to Mr. *Borret* 120000 *l.* That Mr. *Borret* paid out to the ſeveral Suitors 77485 *l.* and I find the Charge remaining on Mr. *Borret*'s Office unpaid to the Suitors, is 42515 *l.* Theſe are the Sums that upon Examination of the Accompts we find to be right.

Dr. *Sayer.* If the Gentlemen that are Managers for the Houſe of Commons have done, we beg leave to ask Mr. *Thompſon* this Queſtion, whether on the making up of theſe Accounts any Executor or Adminiſtrator of Mr. *Borret* was preſent?

Mr. *Thompſon.* When we examined the Accounts, we underſtood there was no Repreſentative of Mr. *Borret*; and I think it is put in the *Report*, that we could get no Account but from his Clerk, Mr. *Godfrey* and Mr. *Bennet*, two Maſters in *Chancery*.

Mr. *Com. Serj.* What Books was it he formed thoſe Accounts from?

Mr. *Thompſon.* The firſt Charge, or the Charge from Mr. *Meller* on Mr. *Borret*, was taken from Mr. *Meller*'s Account. The 77485 *l.* paid out, was an Account from Mr. *Borret*'s Books, made up by his Clerk, under the Inſpection of Mr. *Godfrey* and Mr. *Bennet*.

Mr. *Com. Serj.* I deſire he may be asked, whether he himſelf knew thoſe to be Mr. *Borret*'s Books, or only by Relation from other Perſons?

Mr. *Thompſon.* Only by Relation from his Clerk.

Mr. *Com. Serj.* Then, with Submiſſion, they muſt go further before the Ballance can be taken notice of. They muſt eſtabliſh that theſe Books are Mr. *Borret*'s Books.

Mr. *Sol. Gen.* We have done with Mr. *Thompſon.*

Mr. Serj. *Pengelly.* We hope the Council for the Earl impeached, will be pleaſed to read his own *Anſwer*, wherein he owns that Mr. *Godfrey* and Mr. *Bennet*, were employ'd by himſelf to take the Effects of Mr. *Borret* into their Cuſtody.

E. of *Maccleſ.* If I apprehend Mr. *Thompſon*, he ſays, the Charge is taken from the Account given by Mr. *Meller* himſelf. I deſire to know, whether Mr. *Meller* was not called upon to diſcharge himſelf of the Money he had in his Hands, before he ſurrender'd to Mr. *Borret*, and whether that was not the Occaſion of his being there?

Mr. *Thompſon.* I apprehend Mr. *Meller* was ſent for, in order to know the State of the Office at the time he left it.

E. of *Maccleſ.* So he gave an Account how it ſtood at the time of quitting the Office, and what he paid over to Mr. *Borret*?

Mr. *Thompſon.* I apprehend he did ſo.

Mr. Serj. *Probyn.* I deſire Mr. *Thompſon* may be ask'd, whether the 77485 *l.* Diſcharge, was taken from the Relation of Mr. *Godfrey* and Mr. *Bennet*, or from the Books themſelves; or whether he did examine the Books himſelf?

Mr. *Thompſon.* I went through every Particular of Mr. *Meller*'s Accompt; as to the other, my Memory does not ſerve me to anſwer particularly.

E. of *Maccleſ.* Whether they did not report at that time, they could not take the Accompts perfectly for want of an Adminiſtrator?

Mr. *Thompſon.* I believe, my Lords, we might do ſo, and I believe if the Report is turn'd to, it will appear ſo. I don't mention theſe Sums as an exact Accompt, they were the beſt Accompts we could get?

Dr. *Sayer.* The Queſtion I would trouble your Lordſhips with, becauſe it is of great Conſequence, is, whether the Accompt of 120,000 *l.* which lies as a Charge upon Mr. *Borret*'s Office, is not the Accompt which Mr. *Meller* is to diſcharge himſelf by, and of thoſe Effects for which he otherwiſe remains reſponſible?

Mr. *Thompſon.* How far Mr. *Meller* is to diſcharge himſelf, I am no competent Judge. This is the Accompt that the Office, as I apprehend, ſtood charg'd with.

Dr. *Sayer.* To put the Queſtion ſhorter. Whether it is the Accompt of Mr. *Meller*, as Predeceſſor in the Office to Mr. *Borret*?

Mr. *Thompſon.* I apprehend it ſo.

Mr. *Plummer.* Whether Mr. *Meller* did not produce Receipts for Mr. *Borret*, for this whole Accompt?

Mr. *Thompſon.* To the beſt of my Remembrance, Mr. *Meller* did produce Vouchers for every Article ſet down in his Accompt.

Mr. Serj. *Probyn.* I deſire he may be ask'd, whether there were any Proofs made of theſe Vouchers?

Mr. *Thompſon.* What the Gentleman means by Proofs, I don't know. They were Receipts under Mr. *Borret*'s own Hand for the whole Sum.

Mr. *Com. Serj.* I deſire he may be ask'd, whether he is acquainted with Mr. *Borret*'s Hand-Writing, or whether there was any Proof made of it?

Mr. *Thompſon.* Mr. *Borret*'s Clerk was there, and affirm'd every Receipt to be Mr. *Borret*'s Hand-Writing.

Mr. *Com. Serj.* I would ask, if there was any Oath made, or if it was only upon his Word?

Mr. *Thompſon.* If your Lordſhips will give me leave to have recourſe to the Report, I will recollect myſelf. I can't ſay whether Mr. *Borret*'s Clerk was ſworn or no, I think he was; I don't find it ſet down in the Report.

Mr. *Lutwyche.* I would beg leave to ask this

Queſtion. This Report, that is ſign'd by him as one of the Committee, whether it was laid before the Council, and to whom delivered in, in order to be laid before the Council?

Mr. *Thompſon.* This very Report was delivered by Mr. *Baron Gilbert*, to the Committee of Council.

E. of *Maccleſ.* I hope it is the ſame that is before your Lordſhips, if it is not, I can't tell what to ſay to it.

Mr. Serj. *Pengelly.* This is the Original Report, of which your Lordſhips have a Copy on your Lordſhips Table.

E. of *Maccleſ.* I deſire it may be delivered in and lye upon the Table.

Mr. Godfrey *called.*

Mr. *Sol. Gen.* We deſire Mr. *Godfrey* may be ask'd, whether upon the Death of Mr. *Borret*, he was directed to take an Account of the State of his Office?

Mr. *Godfrey.* Upon the Death of Mr. *Borret*, my Brother *Bennet* and I, were deſired by my Lord *Macclesfield*, to look into the Affairs of Mr. *Borret's* Office, and ſee how the Accompt ſtood; and likewiſe to ſee what Securities were in the Bank, in the Exchequer, and Eaſt-India Company, and other Funds. Accordingly, I went to the Bank, and to the Eaſt-India Houſe, and took an Account of what I found ſtood in his Name there. I believe Mr. *Bennet* will ſatisfy your Lordſhips, he went to the Exchequer and other Places. I applied firſt to the Bank, to Mr. *Hanger*, who was then Deputy Governour, and he was ſo kind to ſend an Officer to ſearch the ſeveral Books, and I had this Accompt: There was in Mr. *Borret's* Name 1000 *l.* in 5 *l. per Cent* Annuities, 1000 *l.* Bank Stock. And then I went to the Eaſt-India Houſe, and there was 240 *l.* Eaſt-India Stock in his Name. This was all the Account I took.

Mr. *Sol. Gen.* In what State was the Office in General?

Mr. *Godfrey.* I did not look over the Office Books. I believe Mr. *Bennet* who was with me took that Charge upon him: I believe he is capable of giving you an Account. I did not ſee the Office-Books at all. But upon my talking with Mr. *Bennet* about it, he found there was more Stock and Security in Mr. *Borret's* Name in the ſeveral Funds, than he could find him charg'd with in the Books of the Office.

Mr. Serj. *Pengelly.* When Mr. *Thompſon* and the other Gentlemen enquired into the particular Effects, whether, when he appear'd there, the Accompt he gave in was a true Accompt?

Mr. *Godfrey.* To the beſt of my knowledge, in relation to Mr. *Borret's*, it was.

Mr. *Sol. Gen.* I deſire one Queſtion more, whether it is uſual to enquire into the Effects of a Predeceſſor, unleſs there is reaſon to ſuſpect a Deficiency?

Mr. *Godfrey.* I don't know whether it is uſual, but it is extreamly neceſſary. When this Gentleman was expiring in ſuch an Office, having no Friends in Town, nor any intimate acquaintance beſides myſelf to take care of his Effects; I thought I ought to take ſome care, that his Office ſhould not be plundered; and that was the only Reaſon that induced me to take care of his Effects, that they might not be embezzled.

Mr. Serj. *Pengelly.* Whether they did not find the Office in great Confuſion?

Mr. *Godfrey.* In that part of his Office which was at his Chambers in the Temple, we found his Papers in great Confuſion, lying without any Method or Order. We collected them as well as we could, and what Things we found of Value or belonging to the Suitors, as Goldſmith's Notes, Notes under Hand for Money, we put them upon a File; and that File, together with other little Moveables we found belonging to him, as Rings and a Watch, were all put in a Bag, and ſealed up by Mr. *Bennet* and myſelf, Mr. *Grant*, who was Mr. *Borret's* Lady's Father, and Mr. *Grant* the Clergyman, who was his Lady's Uncle, and put them into a Trunk and lock'd them up; and they are now at my Houſe.

Sir *W. Strickland.* I would ask him whether the next of Kin did not refuſe to take out Adminiſtration, becauſe of the Deficiency?

Mr. *Com. Serj.* Here can be no Anſwer, but yes or no, I hope Gentlemen will not ask ſuch Queſtions.

E. of *Maccleſ.* I deſire he may be ask'd, whether any Advice was given concerning taking out, or not taking out Adminiſtration?

Mr. *Godfrey.* Mr. *Grant* the Uncle, ſaid, that he was a Creditor of Mr. *Borret's*, by Bond (which indeed I was ſurpriz'd to hear, I did not think he owed any Man a Shilling;) between 6 and 700 *l.* and being ſo great a Creditor, he thought if he took out Adminiſtration he ſhould be paid firſt. I told him, as Mr. *Borret* had been in an Office of great Weight, and there was a great Truſt, I could not tell how Matters ſtood in the Office; and if there ſhould prove a Deficiency, I believed he would involve himſelf in taking out Adminiſtration, in much more trouble than he was aware of.

Sir *W. Strickland.* I deſire he may be ask'd, if he did not apprehend there would be ſuch Deficiency?

Mr. *Godfrey.* I did not apprehend at that time there would be any Deficiency. He had been in the Office about four Years, he had had Opportunities of re-imburſing himſelf: He had a handſome Fortune of his own when he came in, and had with his Lady 3000 *l.* Therefore I was under no apprehenſion that there would be a Deficiency.

E. of *Maccleſ.* I beg leave I may ask Mr. *Godfrey*, whether he was acquainted very well with the Affairs of Mr. *Borret*, and knew his Circumſtances?

Mr. *Godfrey.* I have had ſome Years acquaintance with Mr. *Borret*. As to his real Eſtate, I was not perfectly acquainted with it, I had it only by common Relation, that he had an Eſtate of about 400 *l.* a Year, or rather better; but I don't know it of my own Knowledge.

E. of *Maccleſ.* As to his real Eſtate, you ſay you don't know it of your own Knowledge; whether are you particularly acquainted with his perſonal Eſtate?

Mr. *Godfrey.* No my Lords.

E. of *Maccleſ.* I deſire Mr. *Godfrey* to inform your Lordſhips, what he ſaid to me after Mr. *Borret's* Death, whether there would be a Loſs or not a Loſs in Mr. *Borret's* Office?

Mr. *Godfrey.* I can't at preſent remember what Diſcourſe paſſed between the noble Earl and my ſelf upon the death of Mr. *Borret*. I believe I might ſay, and it was my Opinion, that there would be no Deficiency. I have heard his Eſtate was ſuch, and I knew very well that his Lady's Fortune was

ſo

ſo much, and that he diſpoſed of a Place, which was the Filazer of *Yorkſhire*; for which he had, as I have been inform'd, 4200 *l.* And theſe were the Reaſons that induced me to believe there wou'd be no Deficiency; and I knew very well that I cou'd ſay of my own Knowledge, Mr. *Borret* lived at no extravagant rate; for I am ſure all the Time he was a Maſter, and in Town, he never ſpent 200 *l.* a Year.

Sir *W. Strick.* He ſays, he has heard he had 400 *l.* a Year in Land: Does he not as well know that that Eſtate was ſettled upon his Family and Children?

Mr. *Godfrey.* I have heard, that upon his Marriage, ſome part of it was ſettled, but whether all be ſettled, or not, I can't tell.

E. of *Maccleſ.* It ſeems this Gentleman ſays, he did not ſpend 200 *l.* a Year. How came you to imagine that he ſhould ſpend no more than 200 *l.* a Year?

Mr. *Godfrey.* He told me ſo.

E. of *Maccleſ.* Where was his Family?

Mr. *Godfrey.* In the Country.

E. of *Maccleſ.* With whom?

Mr. *Godfrey.* With his Lady's Father; and when he was in Town, he had private Chambers in the *Temple*, and only kept one Servant, and one Horſe.

E. of *Maccleſ.* I deſire he may be asked, whether he did not once intend and propoſe himſelf to take out Adminiſtration to Mr. *Borret*, and if he did not take ſome ſteps towards it?

Mr. *Godfrey.* I had ſo great a concern for the Office, and the Securities not being transferred to a proper Hand, that I was willing to take out Adminiſtration, rather than there ſhould be any clamours on account of the neglect of Buſineſs in the Office. But, my Lords, upon conſidering the Matter, I did not apprehend that I was ſo fit a Perſon for that purpoſe. I was not very young my ſelf, I had two Children, and thoſe young: I apprehended that if I ſhould drop off before things were ſettled, the Caſe might be ſtill the ſame as I found them: Therefore, I deſired I might have ſomebody joyned with me in this troubleſome Affair, for I did foreſee a good deal of trouble in it. However, I ſaid I was willing to engage in it, if my Brother *John Bennet* were joyned with me, rather than there ſhould be any clamour upon the Office; and I perſwaded him to do the ſame; and accordingly, I went down to the Commons, to ſee if Adminiſtration could be granted to us two. The Relations in the Country, and thoſe People concerned for them, were very willing that Adminiſtration ſhould be granted to Mr. *Bennet* and my ſelf; and accordingly Proceſs was ſent to cite the Children; and that done, as I am inform'd, Sentence was given, that I and my Brother *Bennet* ſhould have the Adminiſtration. But then this unhappy enquiry coming out, we did not know what Situation we might be in, and for that Reaſon I declined it.

E. of *Maccleſ.* Has Mr. *Borret* a Wife living, or is ſhe dead?

Mr. *Godfrey.* His Lady died a Month before him.

E. of *Maccleſ.* What age are his Children?

Mr. *Godfrey.* The eldeſt is about three Years old, and the youngeſt about two, as I am informed; I never ſaw them.

Mr. John Bennet *was called and ſworn.*

Sir *W. Strickland.* The Queſtion I deſire he may be asked is, whether he did not, upon the enquiry into the Affairs of Mr. *Borret's* Office, apprehend that there was a Deficiency.

Mr. *J. Bennet.* I did hear it reported that there would be a great Deficiency in that Office, at the Time I was deſired by my Lord *Macclesfield* to look into it; and I was likewiſe informed ſoon after, that there was like to be no Deficiency.

Sir *W. Strickland.* I deſire he may be asked, how he found it?

Mr. *J. Bennet.* I found his Papers and Accompts in the utmoſt Confuſion. His Accompts were moſtly in looſe Papers: There was one Book indeed, but that extended no farther than to the *Chriſtmas* before his death, which was near three quarters of a Year before he died. Mr. *Godfrey* deſired I would join with him in taking out Adminiſtration; after a good deal of importunity I did conſent.

Sir *W. Strickland.* I deſire one Queſtion more. He ſays he was informed ſoon after, there was like to be no Deficiency in the Office. I deſire to know, whether he did inform the Earl of *Macclesfield* there was like to be no Deficiency?

Mr. *J. Bennet.* No, I did not, but I did inform him, that there was not ſo great a Deficiency as was reported, which was 25 or 30000 *l.* I cou'd make no regular Computation, every thing was in the utmoſt Confuſion, as I acquainted my Lord.

E. of *Maccleſ.* I deſire he may be asked, whether he did not inform me, that he found more Stock in *Borret's* Name, in the Books of the ſeveral Companies, than he could find charged upon him in the Office?

Mr. *J. Bennet.* Not to my Remembrance; for I did not look into the Stocks of the Companies, that was Mr. *Godfrey's* Buſineſs.

E. of *Maccleſ.* You, then look'd into his Books?

Mr. *J. Bennet.* I did ſo.

E. of *Maccleſ.* Then upon your looking into his Books, and Mr. *Godfrey's* looking into the Companies Books, and comparing them together, I deſire you would inform my Lords, whether you did not take more to be in his Name, than he was charged with in the Books of the Office?

Mr. *J. Bennet.* Upon Mr. *Godfrey's* Accompt there appeared, upon caſting it up, to be more Stock in his Name than the Securities he was anſwerable for to the Court.

E. of *Maccleſ.* He has ſaid, he could not tell what the Deficiency would be, becauſe he could not make up a regular Accompt; I deſire he may be asked, whether he did not tell me that he believed there would be no Deficiency?

Mr. *J Bennet.* No, I did not.

E. of *Maccleſ.* Did you not upon your Oath?

Mr. *J. Bennet.* After Mr. *Borret's* death, I did ſay to ſeveral People, when they were clamorous (but whether I ſaid ſo to my Lord *Macclesfield*, I can't tell) that upon the beſt Accompt I could make of his confuſed Affairs, there would be a Deficiency of 4 or 5000 *l.* and I believed not more.

Mr. *Com. Serj.* Tho' Mr. *Bennet* did not look into the Books of the publick Companies; yet whether he did not examine at the Exchequer upon that Occaſion?

Mr. *J. Bennet.* Yes.

Mr. *Com. Serj.* I deſire he may be asked, whether he did not tell Mr. *Godfrey* afterwards, that upon what appear'd, there would be no Deficiency?

Mr. *J. Bennet.* No.

Mr. *Plummer.* Mr. *Bennet* has ſaid, upon comparing the Books, he found more Stock in Mr. *Borret's*

Borret's Name, than he was charged with to the Court. I desire he may be asked, if he found more Stock than the Money and the Effects he was charged with to the Court?

Mr. *J. Bennet.* No my Lords, the best Calculation I could make, was, that there was near 4 or 5000*l.* Deficient.

Mr. *Serj. Pengelly.* We shall leave this Article, with this Observation, that Mr. *Borret* died insolvent, and a debtor to the Suitors of the Court, of which we have given full Evidence; and that Mr. *Thurston* was admitted into that Office by the Earl Impeach'd, without procuring satisfaction to the Suitors of the Court, or Security for their Debts: If that was done, it lies upon the noble Lord to prove it.

Mr. *Onslow.* My Lords, The *Commons* having made good that part of their *Impeachment*, by which the *Earl of Macclesfield* stands *charged* with *extorting* many great, and extravagant Sums of Money, for the admission of several of the Masters of the Court of Chancery into their respective Offices: We shall now proceed, my Lords, to support the *Eleventh* and *Twelfth* Articles, which contain many *corrupt Practices*, used by the said Earl, to advance and encrease the illegal Gain, arising to himself from the Sale and Disposal of those Employments.

The *Eleventh* Article charges him, *my Lords*, with admitting several Persons to those Offices, who at the Time of their Admission, were of *small Substance and Ability*, and highly unfit for so *great* a Trust, as by the nature of their Employments at that Time, was to be placed in 'em.

The Masters in Chancery, *my Lords*, have of late Years, been the *Treasurers* of that Court. The *Repository* of the Money and the Effects brought into the Court, brought there *my Lords*, not by the *choice* and *consent* of the Parties concerned, but by the *compulsion* of the Court, under the Faith of a better Security: But so, *my Lords*, has it fallen out, that this pretended Security, has served only to *delude* the Suitors of the Court, into a false Quiet, whilst their Estates have been made a Prey to infamous *Stockjobbers*, and wantonly *wasted*, by some of 'em, to support the extravagancy of their Living.

The Fortunes, *my Lords*, of *Orphans* and *Lunaticks*, are from the Compassion of our Government, a part of the Care of the Court of Chancery; and have been lodged in the Hands of the Masters, as a Place of *Sanctuary*, till the Owners should become capable of managing their Estates themselves: When They come, *my Lords*, to require their Fortunes, He, who was the *Supreme Judge* in a Court established for their Relief: *He*, who was the Great *Guardian* of Infants and Lunaticks, will be found to have *suffer'd* an advantage to be taken of the *weakness* of the *One*, and the *misery* of the *Other*, to render their *helpless condition* a means of their *Ruin*, instead of their *Protection.*

This, *my Lords*, is the nature of the *Trust* reposed in the Masters of the Court of Chancery, and This the *Use* they have been permitted to make of it. The *Greatness* of the Trust, will shew your Lordships, what Precautions a Lord Chancellor ought to have taken, as to the Officers admitted into these Employments; and the *Abuse* of this Trust, will demonstrate how little His *care* has been, whose Duty it was to provide Persons of Integrity, and responsible Men for the execution of these Offices; but *who*, my Lords, unfortunately for the Suitors, and to the dishonour of the publick Justice of the Kingdom, *presided* seven Years in the Court of Chancery; in which Time, a *deficiency* of above *fourscore thousand Pounds*, has happened upon the Masters *He* admitted; and what perhaps may be worthy of *your Lordship*'s particular Notice, of the *six* Masters on whom there appears to be a Deficiency, *Four* of them were admitted by *Him.* If our Evidence, *my Lords*, as to this Article, rested only on the Proof of these Deficiencies, it would, we apprehend, be sufficient to evince what the Commons have here alledged, That Persons of small Substance and Ability, have, by the *Earl* at the Bar, been preferred to be Masters of the Court of Chancery. But, *my Lords*, to bring this Charge still nearer to the *Earl*, We have it in Proof, and strongly so, That little or no *inquiry* was ever made by Him, into the *Characters* and *Circumstances* of Those He admitted into these Offices. That in fact, my Lords, they were Men of very mean Fortunes. No Security ever required of Them; which still made it the more necessary, that their own Ability should be thoroughly *looked into* and *well approved.* We shall show your Lordships, That they were entrusted, some of 'em, with *forty, sixty*, one of 'em, I think, to the amount of a *hundred thousand Pounds* in Cash and Securities; and yet, *my Lords*, no other Use was made of This, but to *enhance* the *Price* of the Office, when it was to be *Sold* and Barter'd for the benefit of the *Earl.* The Argument used, to bring up any Person to the *Rate* the Earl *insisted* on, was the largeness of the Sum to be transferr'd to the Purchaser. The *Temptation* generally succeeded. The *Reason* your Lordships will easily imagine; and when the *Price* was thus agreed upon, no other Qualification was required, the Person stood right in the *Earl*'s Opinion, and was thought proper to be *Associated* to him.——— Were it only that, my Lords, the Commons would not have troubled your Lordships with this Article, ——but to be *Associated* to him in the Administration and Execution of Justice, and to be *entrusted* with the Fortunes of whole Families, whose only support, perhaps, depended on the Ability and Integrity of these Men: How well, *my Lords*, the *Earl* consulted in the appointment of these Officers, the *Honour* of that publick Justice They were to *assist* him in: What *Regard* He has had for the *Interest* of Those, whose Estates He thus flung into their Hands, The Evidence we shall produce to *your Lordships*, and your own Observations upon it, will abundantly show, notwithstanding his flat denial of this part of the Charge.

I will trouble *your Lordships* but with one particular more in this Article, and it is what the Article concludes with. A remarkable *Declaration* by the *Earl*, of the Ability, and other Qualifications of the Masters, particularly those promoted by him; and this happened, my Lords, upon as remarkable an *Occasion.* A very honourable Person, then a *Judge* also in that Court, and now justly at the Head of it, having seen with Indignation, the *Havock* that was making of the Effects of the Suitors; out of compassion to them, and from a Zeal for Justice, endeavour'd to put some stop to it, in an instance that came within his Cognizance. An Order was made by him, my Lords, on one of the Masters, to allow some Profit to a Suitor arising from her own Money, which the Master designed as it was thought, to have sunk to his own Use. The Master thought himself aggrieved, and fled for Redress to his *Patron,*

tron, the then *Lord Chancellor*, the *Earl* now under your Lordſhips Conſideration; and he was ſecure in ſo doing, for the Order was immediately diſcharged; and then it was, my Lords, to obviate the Clamours that were breaking out from all ſorts of People againſt the Maſters, that the *Earl* did in open Court, then ſitting as *Lord Chancellor*, in his *judicial Capacity*, declare, that the preſent Maſters were Men of as great Probity, Fortunes, and Abilities, as any ſet of Maſters that ever were in that Court; and that he had had the Satisfaction of putting in moſt of them himſelf. As this, my Lords, was ſpoken in general of them all, but with a peculiar Regard to thoſe he had admitted; the Commons have laid it to be to the manifeſt *Deceit* and *Injury* of the Suitors of the Court, which they are juſtified in doing, by the Thing it ſelf being *falſe*, by the Proof we have, *my Lords*, that the *Earl* muſt know it to be *falſe*, and by the Reſemblance it bears to that Series of other mean *Artifices* he had long been practiſing to give a *counterfeit* Credit to theſe *corrupt* Officers. A Credit, *my Lords*, he was ſoon to receive ſome *Benefit* from; for the Witneſs will inform *your Lordſhips*, that a Vacancy of a Maſter in Chancery happened the Day before this *ſignificant* and *memorable* Declaration was made.

My Lords, The Commons have made this Article a part of their *Charge* againſt the *Earl of Macclesfield*, as being the great Source of the *Evil* that is likely to befal the unhappy *Sufferers* in the Court of Chancery; and as it was the *Means* he made uſe of to draw to himſelf thoſe extravagant Sums of Money we have proved him to have received: For Men of ſmall Fortunes, *my Lords*, as they have more Temptations, ſo they run leſs hazard than others in preying upon Money that is entruſted with them; and it is this, *my Lords*, that encourages ſuch Men to give exorbitant Rates for Employments which afford them thoſe Opportunities.

Thus, *my Lords*, I have opened to *your Lordſhips* the Subſtance of the *Eleventh* Article, and the nature of our Proof upon it. The *Twelfth* Article will be opened and enforced to *your Lordſhips* by the Gentleman who is to come after me. I ſhall therefore detain *your Lordſhips* no longer than to make this one Obſervation, That as the Office of a Maſter in Chancery is of great *Truſt* and *Importance*, that as theſe Officers are appointed to this Truſt by the *ſole Diſcretion* of the Lord Chancellor; and that the Effects of the Suitors of the Court are depoſited in their Cuſtody, by his *immediate* Orders, which he might have plac'd in *ſafer* Hands if he had thought fit; he becomes by all this in the nature of a *ſuperior Truſtee* for, and is therefore juſtly *anſwerable* to the Suitors for the Behaviour of theſe *Men*. So, *my Lords*, in ſome Degree may the Publick be thought *anſwerable* for him; which makes his Guilt without Meaſure, who has thus brought a Diſgrace upon his Country, by proſtituting one of its higheſt Courts of Juſtice to his own *Avarice and Corruption*, to the *Rapine* and *Corruption* of his inferior Officers, and to the *Undoing* of thoſe, who, by the Conſtitution of the Kingdom, have been forced into his Power.

Mr. *Palmer*. My Lords, The Gentleman that ſpoke laſt has fully opened the Evidence of the Eleventh Article, and has ſhewn to your Lordſhips, that for his own private and illegal Gain, the impeached Lord did commit the Money and Effects of the Suitors, to Men no way of Subſtance ſufficient for ſo great a Truſt. The Twelfth Article will lay before you a moſt corrupt Practice, uſed without Controul, while the Earl was Chancellor, by which this illegal Gain was immenſely increaſed; and whereby thoſe Maſters of whom the Commons complain in the preceding Article, were tempted and enabled to buy their Offices at extravagant Prices.

Your Lordſhips will ſee what Methods were uſed on the Admiſſion of Maſters in Chancery: Great Sums were paid for the Surrenders and Admiſſions, and thoſe Sums were taken from the Money of the Suitors; ſometimes the Purchaſe-Money was borrowed; but after Admiſſion, repaid from the Caſh of the Office; ſometimes the Value of the Purchaſe was left in the ſurrendring Maſter's Hands: Whatever different ways were taken at the beginning, they all tended to this; the Suitors were to make the Purchaſer eaſy, and People were perſwaded to bid high, by being told how eaſily the largeſt Sums could be raiſed.

It was a common Recommendation to a Purchaſer, to tell him how much Caſh was in the Office; and that he need not be afraid to make any Contract good, Money would be ready as ſoon as he was admitted: Your Lordſhips will ſee the Conſequences of ſuch Recommendations. Maſters did offer, and give more than they could be preſumed they were worth, the Suitors Money was at Hand to make good the Bargain; and theſe are the Maſters in whoſe Offices appear the greateſt Deficiencies.

It will appear to your Lordſhips, that Mr. *Kinaſton*, and Mr. *Thomas Bennet*, procured their Places in this manner. Mr. *Kinaſton* diſcharged a Bond of Six Thouſand Pounds to his Predeceſſor, by giving a Receipt of the ſame Value. Mr. *Bennet* gave a Receipt to his Predeceſſor for Ten Thouſand Pounds; both acknowledged a Transfer of ſo much of the Suitors Money, the one received but Nine Pounds, and the other Fifteen Hundred, the reſt was kept back as part of the Price of their Office, and is now a part of their Deficiencies. How great their Deficiencies are, may be obſerved to your Lordſhips; Mr. *Bennet*'s is near Ten Thouſand Pounds, and Mr. *Kinaſton*'s above Twenty Thouſand.

This is the Practice, the impeached Lord, in his Anſwer, declares himſelf totally ignorant of, and is what the Commons declare he knew, connived at, and encouraged; and as they have been always careful to aver nothing but what they are ſatisfied will be fully maintained, this Article will be ſupported by Proofs, that the impeached Lord was well informed of what he now denies the Knowledge of; that it was the Subject of his Diſcourſe, and that he feared, and endeavoured to prevent a Diſcovery.

And your Lordſhips will find him obſerving on the Accounts of ſome of the Maſters, as they were given in on the late Enquiry, *That they were given in in the worſt Manner*; *That they ſhould convince the World that they paid for their Places out of the Suitors Money*; *and, That they would at laſt diſcover what he had always, when asked, taken care to deny*.

The impeached Lord admits, in his Anſwer, that he never cauſed any Schedules to be made of the Suitors Effects, to be transferred over to ſucceeding Maſters: That it was what his Predeceſſors ne-

ver did before him, and that if the Conſequences alledged by the Commons, have ariſen from this Practice, or the not ordering ſuch Schedules, he thinks he is not Criminal.

My Lords, the Charge of the Commons is general, that he knew the Abuſe, and took no Care to reform it; if he had taken Care that the Effects of the Suitors ſhould have been transferred by Schedule; if he had appointed any one to overlook the Transfer; if he had taken any Method at all to be aſſured that the Effects of the Suitors were duly made over according to this Order of Transfer, the Commons would not have charged as they have done, and perhaps he had not at this Time appeared ſo nigh your Lordſhips Bar.

But if the impeached Lord thinks he is juſtified by ſaying, it was not his Duty, and therefore the Omiſſion no Offence: The Commons aver in their Article, that it is the Duty of the Chancellor of *Great Britain*, to ſuperintend the Maſters and their Accounts; and it is ſubmitted to your Lordſhips, whether he is not Criminal, if he ſuffers Money depoſited by the Orders of his Court in the Hands of the Maſters, to be without Order, conveyed or left in private Hands.

I ſhall ſay no more to your Lordſhips on this Article, but leave the Proof of it to the Evidence.

Mr. Serj. *Pengelly*. My Lords, the Proof in ſupport of theſe Articles, will go to them both promiſcuouſly. In the firſt Place we beg leave to ſhew to your Lordſhips, the ſeveral Orders of Court, which ſtate the deficiencies of ſeveral Maſters.

Mr. *Ralph Paxton* Sworn.

Mr. Serj. *Pengelly*. We deſire he may be asked, whether the Papers he produces, are true Copies of the Orders Examined by the Books in the Office.

Mr. *R. Paxton*. My Lords, they are true Copies, I Examined them.

Lords Com. *Ordo Curiæ*.

Veneris 29. *Die Januarii*, 1724.

WHEREAS, by an Order made by the Rt. Hon. the late Lord High Chancellor of *Great Britain*, the *Seventeenth* Day of *December* laſt, it was (*inter al*) ordered, That the Bank Notes, and other Effects therein ſpecified, produced before Mr. Baron *Gilbert*, Mr. Juſtice *Denton*, and Mr. Juſtice *Raymond*, Sir. *Nath. Gould*, Mr. *Thomſon*, and Mr. *Hanger*, three of the Directors, and one of them Deputy-Governour of the Bank of *England*, by the ſeveral Maſters of this Court, upon the Examination of their Accompts, for or towards anſwering the Ballance of Caſh admitted by their ſaid Accompts, to remain in their reſpective Hands belonging to the Suitors of this Court, ſhould be depoſited in ſeveral Cheſts, and that then the ſaid Cheſts ſhould be locked up and left in the Cuſtody of the Bank of *England*, in ſuch manner as by the ſaid Order is provided: And whereas, the Maſters had in their ſeveral Accompts, given in Particulars of Stock and of Annuities, transferrable in the Books of the ſeveral Companies, ſtanding in their Names, which belonged to the ſeveral Suitors of this Court, or as their own proper Stock and Annuities, by which part of the Ballance of Caſh in their Hands might be made good, or ſecured. It was further ordered, That they ſhould each of them forthwith, deliver into the reſpective Companies, a Declaration in writing, wherein ſuch Stock in each reſpective Company, or the Annuities there transferrable, as by their reſpective Accompts appeared to belong to the Suitors of the Court, and likewiſe the Stock and Annuities by them reſpectively propoſed towards making good or ſecuring their Ballance of Caſh, or ſo much thereof as ſhould equal the Ballance of their ſaid Accompts; in Caſe they had in their Names, more than ſufficient for that purpoſe ſhould be declar'd to be upon Truſt to attend the Orders of this Court: And it was further ordered; That the ſaid ſeveral Maſters, ſhould forthwith give to the ſaid Mr. Baron *Gilbert*, their Poſt Accompts of their Receipts and Payments ſince the former Accompts; and by a ſubſequent Order of the 21ſt Day of the ſaid *December*, It was ordered, That the ſeveral and reſpective Maſters, whoſe Effects ſo ordered to be ſecured, did not amount to the whole Ballance of Caſh admitted by their Accompts to be in their Hands, ſhould forthwith ſecure the reſt of the Ballance of the Caſh appearing to be due on their reſpective Accounts, by depoſiting in like manner Bank Notes, or other Effects to the Amount thereof, or enter into a Recognizance in a competent Sum of Money, with two or more Sureties to be approved of by Mr. Baron *Gilbert*, Mr. Juſtice *Denton*, and Mr. Juſtice *Raymond*, or any two of them, for duly anſwering from Time to Time as this Court ſhould direct, ſuch Sum and Sums as the remaining Deficiencies of their ſaid reſpective Ballances amount unto. And whereas, Mr. *Edward Conway*, one of the Maſters of this Court, did, on the Nineteenth Inſtant, attend the Right Hon. the Lords Commiſſioners for the Cuſtody of the Great Seal of *Great Britain*, and acknowledge that he was Debtor to the Suitors of the Court on the Ballance of his Caſh Accompt, the Sum of 13039 *l.* 4 *s.* 4 *d.* ½, and that he had brought into the Cheſt the Sum of 3000 *l.* only, ſo that he remains Debtor on the ſaid Caſh Ballance, the Sum of 10039 *l* 4 *s.* 4 *d.* ½. and that ſince making the ſaid former Orders, he had ſold 3500 *l.* South Sea Stock, in the Cauſe between the Lord and Lady *Faulconberg*, which was intended a Security for the Sum of 3425 *l.* and that he had ſince paid off only the ſum of 2593 *l.* 9 *s.* 3 *d.* purſuant to the Orders of this Court in that Cauſe, ſo that there remained the Sum of 831 *l.* 10 *s.* 9 *d.* in his Hands, to be applied to the Parties concerned in that Cauſe; and that he had ſince ſold 2000 *l.* South Sea Annuities Stock, part of the Sum of 17950 *l.* South Sea Annuities Stock, belonging to the Suitors of the Court in ſeveral Cauſes, which he ought to re-place. Their Lordſhips did thereupon order, That the ſaid Mr. *Conway*, ſhould in a Week, depoſite the Sum of 10039 *l.* 4 *s.* 4 *d.* ½. and alſo the ſaid Sum of 831 *l.* 10 *s.* 9 *d.* belonging to the ſaid Cauſe of *Faulconberg* and *Faulconberg* in Bank Notes, or Money in his Cheſt at the Bank of *England*, and alſo ſhould replace the ſaid Sum of 2000 *l.* South Sea Annuity Stock, or that he ſhould enter into a Recognizance of 26000 *l.* with two ſufficient Sureties to be approved of by one of the Lords Commiſſioners for the Cuſtody of the Great Seal of *Great Britain*, for anſwering the ſaid Sums, and replacing the ſaid 2000 *l.* South Sea Annuity Stock, in

ſuch

ſuch Manner as this Court ſhould direct: And this Court being Yeſterday inform'd by Mr. *Attorney General*, on behalf of the Suitors of this Court, that the ſaid Mr. *Conway* had not depoſited either of the Sums aforeſaid, or entered into a Recognizance with two Sureties, as by the ſaid Order he was directed: It was thereupon order'd that he ſhould on this Day attend the Court, to ſhew Cauſe why he did not yield Obedience to the ſaid Order. And he now attending accordingly, and admitting that he had not depoſited either of the Sums aforeſaid, nor replaced the ſaid 2000 *l.* South-Sea Annuity Stock, or given Security with two Sureties, as by the ſaid Order is required: And whereas he did formerly upon Examination of his Accompts, produce to the Perſons who inſpected the ſame, Bank Bills and Notes, ſufficient to make good the ſaid Sum of 13039 *l.* 4 *s.* and 4 *d.* ½: Being the whole Ballance of his Caſh Accompts, but had only depoſited 3000 *l.* part thereof in purſuance of the ſaid Order: And it being ſeveral times demanded by the Court, whether he did know or remember the Names of the Perſon or Perſons from whom he had the ſaid Bank Notes, or any of them, or did know or remember the Names of the Perſon or Perſons to whom he had ſince paid or delivered them, or any of them, he declined giving any direct Anſwer to the ſaid Queſtion relating to his own proper Knowledge and Remembrance, but upon Oath ſaid, it was impoſſible for him to anſwer the ſame; whereupon, and upon hearing of Mr. *Attorney General* and Mr. *Sol. Gen.* on Behalf of the Suitors; and what was farther inſiſted on, this Court doth declare, that the ſaid Mr. *Conway* is guilty of very high Contempts, and doth therefore do for his ſaid Contempts, ſtand committed to the Priſon of the *Fleet*; and that for making Proviſion for the Execution of his Office, and that no Prejudice may happen to the Suitors of the Court by reaſon of the ſaid Commitment, he do in the Cuſtody of the Warden this Afternoon, deliver all his Books and Papers belonging to his Office, unto Mr. *Holford* one other of the Maſters of this Court, who is to act therein as he the ſaid Mr. *Conway* ought to have done during his Commitment; and the Clerk of Mr. *Conway* is to be at Liberty, if he thinks fit, to attend Mr. *Holford* therein, and Mr. *Conway* is at Liberty from time to time to make ſuch Propoſals to the Court for making good his Deficiency as he ſhall think proper.

R. P. *Examin'd 6th of* May, 1720. *by Book of Entries, Cur' Canc' Letter B.*

Lords Com. *Ordo Curiæ.*

Mercur. tertio Die Febr. *Ann. Regni Georgii Regis undecimo.*

WHereas, by an Order of the 29th of *Jan.* laſt, for the Reaſons therein contain'd, it was ordered that Mr. *Thomas Bennet*, one of the Maſters of this Court, ſhould then ſitting, the Court give his own Recognizance to be taken by Mr. *Holford*, one other of the Maſters of this Court in the Penalty of 18150 *l.* conditioned to anſwer and pay the Sum of 9075 *l.* therein mention'd, in ſuch Manner as this Court ſhould direct; and that upon his ſo doing, the time for his performing of an Order of the 12th of *Jan.* laſt, for depoſiting the ſaid 9075 *l.* or procuring two or more Sureties, to enter into a Recognizance of the Penalty aforeſaid, as in the ſaid Order is mentioned, ſhould be enlarg'd till this Day: And if he ſhould procure ſuch Sureties to enter into ſuch Recognizance, he was firſt to give the Names of the intended Sureties to Mr. *Paxton* (Soll. on behalf of the Suitors of this Court) to the end he might enquire after their Abilities; and the ſaid Mr. *Thomas Bennet*, was this Day to attend the Right Honourable the Lords Commiſſioners, for the Cuſtody of the Great Seal of *Great Britain*, when ſuch farther Order ſhould be made as ſhould be juſt. And the ſaid Mr. *Thomas Bennet* this Day attending their Lordſhips, in the Preſence of Mr. *Attorney General*, and Mr. *Sollicitor General*, on behalf of the Suitors of the Court; and the ſaid Mr. *Thomas Bennet*, now delivering into Court a Particular of ſeveral Eſtates which he propoſed to aſſign and convey as the Court ſhall direct, in truſt for the Suitors of the Court, and ſubmitting to be examined upon Interrogatories, for Diſcovery of all other Eſtate he has both Real and Perſonal, and that the ſame ſhall be alſo aſſigned and conveyed to the ſame Truſt: Their Lordſhips do therefore Order, that the time for the ſaid Mr. *Thomas Bennet*'s giving his Recognizance with two or more Sureties in the Penalty aforeſaid, be enlarged until *Wedneſday* next, at which time the ſaid Mr. *Thomas Bennet* is to attend in Court, when ſuch farther Order ſhall be made as ſhall be juſt. But in the mean time, he is to aſſign and convey the ſeveral Eſtates by him now propoſed, unto the ſaid Mr. *Holford*, as he, the ſaid Mr. *Holford* ſhall approve and direct, and is alſo within that time to produce and leave with the ſaid Mr. *Holford*, all Deeds and Writings in his own Hands relating thereto; and ſo far as he is able to procure the Mortgages and Annuitant, to produce and leave with the ſaid Mr. *Holford*, the ſeveral Deeds and Writings in their reſpective Hands relating to the ſaid Perſons. And the ſaid Mr. *Thomas Bennet* is alſo within the ſame time to be examined upon Interrogatories, before the ſaid Mr. *Holford*, for diſcovery of all other, his real and perſonal Eſtates, and is alſo to aſſign and convey the ſame to the ſaid Mr. *Holford*, as he ſhall approve and direct. And what Eſtates ſhall be by him, the ſaid Mr. *Thomas Bennet* ſo aſſigned and conveyed to the ſaid Mr. *Holford*, as aforeſaid, the ſame are to be upon Truſt for the Suitors of the Court, as the Court ſhall direct; and the ſaid Mr. *Paxton* is forthwith to prepare and lay Interrogatories before the ſaid Mr. *Holford* for the Purpoſe aforeſaid.

R. P. *Examined 6th of* May, 1725. *by Book of Entry, Cur' Canc' Letter B.*

Ordo

Ordo Curiæ

Martis Decimo Nono Die Januarii, 1724.

WHereas, by an Order made by the Right Honourable the Lord High Chancellor of *Great Britain*, the ſeventeenth Day of *December* laſt, it was (amongſt other Things) ordered, that the Bank Notes and other Effects therein ſpecified, produced before Mr. Baron *Gilbert*, Mr. Juſtice *Denton*, and Mr. Juſtice *Raymond*, Sir *Nathaniel Gould*, Mr. *Thompſon*, and Mr. *Hangar*, three of the Directors, and one of them Deputy Governour of the Bank of *England*, by the ſeveral Maſters of this Court, upon the Examination of their Accompts, for, or towards anſwering the Ballance of Caſh admitted by their ſaid Accompts to remain in their reſpective Hands belonging to the Suitors of this Court, ſhould be depoſited in ſeveral Cheſts, and that then the ſaid Cheſts ſhould be lock'd up, and left in the Cuſtody of the *Bank* of *England*, in ſuch manner as by the ſaid Order is provided. And it was further ordered, that the ſaid ſeveral Maſters ſhould forthwith give to the ſaid Mr. Baron *Gilbert*, Poſt Accompts of their Receipts and Payments ſince their former Accompts. And by a ſubſequent Order of the one and twentieth Day of the ſaid *December*, it was ordered, that the ſeveral and reſpective Maſters of this Court, whoſe Effects ſo ordered to be ſecured, did not amount to the whole Ballance of the Caſh admitted by their Accompts to be in their Hands, ſhould forthwith ſecure the reſt of the Ballance of the Caſh appearing to be due on their reſpective Accompts, by depoſiting in like Manner, Bank Notes, or other Effects, to the Amount thereof, or enter into a Recognizance in a competent Sum of Money, with two or more Sureties, to be approved by Mr. Baron *Gilbert*, Mr. Juſtice *Denton*, and Mr. Juſtice *Raymond*, or any two of them, for duly anſwering from time to time, as this Court ſhould direct, ſuch Sum and Sums, as the remaining Deficiencies of their ſaid reſpective Ballances amount unto. And Mr. *Edward Conway*, one of the Maſters of this Court, this Day attending the Lords Commiſſioners for the Cuſtody of the *Great Seal* of *Great Britain*, and acknowledging that he was Debtor to the Suitors of the Court on the Ballance of his Caſh Account, in the Sum of thirteen Thouſand and thirty nine Pounds four Shillings and four Pence half Penny; and that he had brought into the Cheſt the Sum of three thouſand Pounds only, ſo that he remains Debtor on the ſaid Caſh Ballance, the Sum of ten Thouſand and thirty nine Pounds four Shillings and four Pence Half Penny; and that ſince the making the ſaid former Orders, he has ſold three Thouſand five Hundred Pounds South-Sea Stock, in the Cauſe between the Lord and Lady *Faulconberg*, which was intended a Security for the Sum of three Thouſand four Hundred and twenty five Pounds; and that he hath ſince paid off only the Sum of two Thouſand five Hundred and ninety three Pounds nine Shillings and three Pence, purſuant to the Orders of this Court in that Cauſe; ſo that there remains the Sum of eight Hundred and thirty one Pounds ten Shillings and nine Pence, in his Hands, to be apply'd to the Parties concern'd in that Cauſe; and that he has ſince ſold two Thouſand Pounds South Sea Annuity Stock, part of the Sum of ſeventeen Thouſand nine Hundred and fifty Pounds South Sea Annuity Stock, belonging to the Suitors of the Court in ſeveral Cauſes, which he ought to replace: Their Lordſhips do thereupon Order, that the ſaid Maſter *Conway*, do in a Week, depoſite the ſaid Sum of ten Thouſand and thirty nine Pounds four Shillings and four Pence Half Penny, and alſo the ſaid Sum of eight Hundred and thirty one Pounds ten Shillings and nine Pence, belonging to the ſaid Cauſe of *Faulconberg* and *Faulconberg*, in Bank Notes or Money in his Cheſt at the Bank of *England*; and alſo do replace the ſaid Sum of two Thouſand Pounds South Sea Annuity Stock; or that he do enter into a Recognizance of twenty ſix Thouſand Pounds, with two ſufficient Sureties, to be approved of by one of the Lords Commiſſioners for the Cuſtody of the *Great Seal* of *Great Britain*, for anſwering the ſaid Sums, and replacing the ſaid two Thouſand Pounds South Sea Annuity Stock, in ſuch Manner as this Court ſhall direct.

Tho. Parnell, Dep. Reg.

R. P. *Examin'd 6th of* May, 1725. *with Book of Entries, Court. Canc' Letter B.*

Ordo Curiæ

Mercurii Viceſſimo Die, Januarii. 1724.

WHereas by an Order made by the Right Honourable the late Lord Chancellor of *Great Britain*, the ſeventeenth day of *December* laſt, it was (among other Things) ordered, That the Bank Notes, and other Effects therein ſpecified, produced before Mr. Baron *Gilbert*, Mr. Juſtice *Denton*, and Mr. Juſtice *Raymond*; and Sir *Nathaniel Gould*, Mr. *Thompſon*, and Mr. *Hanger*, three of the Directors, and one of them Deputy Governor of the Bank of *England*, by the ſeveral Maſters of this Court, upon the Examination of their Accounts, for or towards anſwering the Ballance of Caſh admitted by their ſaid Accounts to remain in their reſpective Hands, belonging to the Suitors of this Court, ſhould be depoſited in ſeveral Cheſts, and that then the ſaid Cheſts ſhould be locked up and left in the Cuſtody of the Bank of *England*, in ſuch manner, as by the ſaid Order is provided. And it was further ordered, That the ſaid ſeveral Maſters ſhould forthwith give to the ſaid Mr. Baron *Gilbert* Poſt Accounts of their Receipts and Payments ſince their former Accounts. And by a ſubſequent Order of the one and twentieth day of the ſaid *December*, It was ordered, That the ſeveral and reſpective Maſters of this Court, whoſe Effects ſo Ordered to be ſecured, did not amount to the whole Ballance of the Caſh admitted in their Accounts to be in their Hands, ſhould forthwith ſecure the reſt of the Ballance of Caſh appearing to be due on their reſpective Accounts, by depoſiting, in like manner, Bank Notes, or other Effects, to the amount thereof, or enter into a Recognizance in a competent Sum of Money, with two or more Sureties,

ties, to be approved by Mr. Baron *Gilbert*, Mr. Juſtice *Denton*, and Mr. Juſtice *Raymond*, or any two of them; for duely Anſwering from Time to Time, as this Court ſhould direct; ſuch Sum and Sums as the remaining Deficiencies of their ſaid reſpective Ballances amounted unto; And Mr. *Kinaſton*, one of the Maſters of this Court, being this day preſent before the Right Honourable Sir *Jeffery Gilbert*, Knight, one of the Lords Commiſſioners for the Cuſtody of the Great Seal of *Great Britain*, and being examined touching the Money and Effects for which he was anſwerable to the Suitors of the Court, did admit, that the Sum of thirty one thouſand nine hundred and fifty four Pounds, fifteen Shillings and a Farthing, was the Caſh Ballance in his Hands, due to the Suitors; and that he had depoſited in his Cheſt at the Bank, the Sum of four thouſand ſix hundred and eighty ſix Pounds, one Shilling and nine Pence, in purſuance of the Order of the ſeventeenth of *December* aforeſaid; and that he had declared a Truſt of three hundred Pounds South-Sea Stock for the Suitors, which at the preſent valuation is three hundred and ſixty Pounds; ſo that there remains the Sum of twenty ſix thouſand nine hundred and eight Pounds, eleven Shillings and three Pence Farthing, deficient and unſecured to the Suitors of the Court; and propoſed towards Satisfaction thereof, to Aſſign over a Debt of twenty thouſand eight hundred and fifty Pounds, owing to him from Mr. *Delahaye*, in ſuch manner as ſhould be thought proper for the Benefit of the Suitors: But alledged that he was not to be charged with the Sum of ſeven thouſand five hundred and ſeventy five Pounds, mentioned in his Accounts to be part of the aforeſaid twenty ſix thouſand nine hundred and eight Pounds, eleven Shillings and three Pence Farthing. Whereupon their Lordſhips conſidering what was alledged by him, were of Opinion, That he was anſwerable to the Suitors of the Court for the ſaid Sum of ſeven thouſand five hundred and ſeventy five Pounds; and do therefore Order, That the ſaid Mr. *Kinaſton* do, in a Week, depoſit the ſaid Sum of twenty ſix thouſand nine hundred and eight Pounds, eleven Shillings and three Pence Farthing, in Money or Bank Notes, in his Cheſt at the Bank of *England*, or enter into a Recognizance in the penalty of fifty three thouſand eight hundred and ſeventeen Pounds, with two or more Sureties, to be approved of by one of the Lords Commiſſioners for the Cuſtody of the Great Seal of *Great Britain*, to Anſwer and Pay the ſaid Sum of twenty ſix thouſand nine hundred and eight Pounds, eleven Shillings and three Pence Farthing, in ſuch manner as this Court ſhall direct.

Tho. Parnell,
Dep. Reg.

R. P. *Examined the 6th of* May, 1725. *by the Book of Entries.* Cur' Cance' *Letter B.*

Mr. *Sol. Gen.* The Managers for the Houſe of Commons lay before your Lordſhips theſe Orders, to ſhew, that the ſeveral Maſters therein mentioned, were deficient. It will be incumbent on the noble Lord to ſhew; that when they were admitted, they were of Ability proper for ſuch a Truſt. We now proceed upon the Declaration that was made on the 21ſt of *January* laſt was twelve-Month, and deſire that Mr. *Waller* may be called.

Mr. *Waller* Sworn.

Mr. *Sol. Gen.* My Lords, we deſire he may be ask'd, whether he applied to my Lord Chancellor upon an Order made by his Honour the Maſter of the Rolls, relating to Mr. *Conway*; and what it was my Lord Chancellor ſaid on that Occaſion?

Mr. *Waller*. In *July* 1723. I had Directions from my Client, to apply to Mr. *Conway*, to lay out upon *South-Sea* Annuities the Sum of 4000 *l.* that had been brought before him in a Cauſe between Mr. *Davenant* and my Lord *Cardigan*. The Maſter told me at firſt, he would take Care of it. Upon further Application, he ſaid the Order had directed another Sum of Money ſhould be brought before him in the ſame Cauſe, and that he could not put out the one without the other. Upon this, I applied, by Petition, to the Maſter of the Rolls, praying, that Mr. *Conway* might be oblig'd to put out the Money, and that he might anſwer Intereſt for it after he had had it a reaſonable Time in his Hands. Upon that, the Maſter of the Rolls directed he ſhould lay out the Money immediately.

Mr. Serj. *Probyn*. I beg your Lordſhips Pardon for interrupting this Witneſs. In the manner he is going on, your Lordſhips obſerve, he is taking Notice of Orders, Petitions, Acts of the Court, and this he gives upon his Memory. We think theſe ought to be produced.——

Mr. *Sol. Gen.* If they are deſirous to entertain your Lordſhips with them, we have them all here. We only make uſe of them to let in the Declaration of the noble Lord.

E. of *Macclef.* If that be all the Uſe, there is no need to produce theſe Orders: But if they are to introduce Evidence with relation to the Merits of the Caſe, it is proper to have them produced.

Mr. *Sol. Gen.* We don't diſpute the Juſtice of the Order then made, but ask the Occaſion of it; and all we deſire is what was declared, and what was the Occaſion of the Declaration.

Mr. Serj. *Pengelly*. The Managers don't enter into the Conſideration whether the Order is juſt, or no. All they repreſent to your Lordſhips, is the Occaſion of this Declaration. Whether a Man acts juſtly, that detains Money, and does not pay it out when he ought to do it, that we leave to another Determination. But what we ask now, is the Declaration of the Earl of *Macclesfield*, and the Occaſion of it.

Mr. *Waller*. Upon the Petition to the Maſter of the Rolls, he made an Order to put the Money out, and that the Maſter ſhould pay ſome Intereſt. On this, he applied to my Lord Chancellor, to diſcharge this Order. My Lord, upon that Occaſion, ſaid, the Maſter was not to blame, and that the then Maſters were a Set of Maſters of as great Probity, Ability, and Fortune, as ever had been before; and that his Lordſhip had had the Satisfaction of having put in moſt of them himſelf. I can't ſay that theſe were the very Words, but it was to this Effect.

Mr. *Sol. Gen.* When, at what Time was this?

Mr. *Waller*. This Declaration was made the 21ſt of *January*, 1723.

Mr. *Sol. Gen.* Where was it?

Mr. *Waller*. In Court, at my Lord's Houſe in *Lincoln's-Inn-Fields*, where he uſually ſat.

Mr. *Sol. Gen.* Was there at that time any Vacancy of any Maſter's Office; and how long did that Vacancy happen before?

Mr. *Waller*. Mr. *Fellowes* died either the Day before, or the Day but one before.

Mr. *Sol. Gen.* Was there any Obſervations made at that Time of any Perſon in Court that took notice of what was ſaid?

Mr. *Waller*. One of the Counſel took Notice of ſomebody taking Notes, and ſaid he believed it would be in the *Amſterdam* Gazette in a ſhort Time; or to that Purpoſe. My Lord Chancellor asked who he was?

E. of *Macclef*. I deſire he may tell your Lordſhips, when Application was made to me by way of Complaint of it, what it was I ſaid at that Time?

Mr. *Waller*. I don't remember.

E. of *Macclef*. Pray recollect your ſelf, if I did not ſay it was right, and they had a Right to take Notes there.

Mr. *Waller*. I don't remember that you did.

E. of *Macclef*. Did I make no Anſwer?

Mr. *Waller*. Not as I remember.

Mr. Serj. *Probyn*. I deſire he may be ask'd, whether he kept any Notes or Memorandum of the Words that were then ſaid?

Mr. *Waller*. No, my Lords.

Mr. Serj. *Probyn*. How does he then come to remember the very Words?

Mr. *Waller*. Since my Lord *Macclesfield*'s Counſel will have it, I muſt acquaint your Lordſhips, that it ſtruck me with ſo much Aſtoniſhment to hear ſuch a Declaration made on the Maſters, which moſt People thought they did not deſerve, that indeed I could not but remember it, and have remembred it ever ſince.

Mr. Serj. *Pengelly*. We have ſeveral other Perſons who were preſent at this Time, when this Declaration was made; but we apprehend it was ſo publick, ſo notorious, and has been ſo diſtinctly proved by a Perſon preſent, that it will be unneceſſary to call further Evidence to it.

Mr. *Sol. Gen.* We beg leave to trouble your Lordſhips as to one Circumſtance, to aſcertain the Death of Mr. *Fellowes*: We have one of Mr. *Fellowes*'s Servants here.

Edward Ange ſworn.

Mr. *Sol. Gen.* We deſire he may be ask'd, whether he was a Servant to Mr. *Fellowes?*

Mr. *Ange*. I was a Clerk in Mr. *Fellowes*'s Office, at the Time of his Death, and many Years before.

Mr. *Sol. Gen.* When did he die, what Day?

Mr. *Ange*. Upon the 19th of *January*, 1723.

Mr. *Sol. Gen.* It was the 21ſt that the Declaration was made, ſo that it ſeems that it was neceſſary; and ſuch a Declaration was wanting at that Time to keep up the Price of the Office.

Mr. *Lightboun* called.

Mr. *Sol. Gen.* We deſire Mr. *Lightboun* may be ask'd, whether he gave any Intimation to the Earl of *Macclesfield*, that the Circumſtances of ſome of the Maſters were ſuſpicious, before the 21ſt of *January* was twelve-month?

Mr. *Lutwyche*. I deſire Mr. *Lightboun* would give your Lordſhips an Account what Diſcourſe he had concerning the Maſters with the Earl of *Macclesfield*.

Mr. *Lightboun*. I can't ſay I acquainted him with my ſuſpecting any of the Maſters by Name, being deficient, but I told him in Converſation, that as a Deficiency had happened in Mr. *Dormer*'s Office, the like Accident might happen in others; and that it might be proper for his Lordſhip to take ſome meaſures to prevent the like for the future, if poſſible.

Mr. *Lutwyche*. In the Year 1723. Whether had you any Diſcourſe with my Lord Chancellor relating to the Circumſtances of any of the Maſters, or about any Propoſals of Security to be given by them?

Mr. *Lightboun*. In the Year 1723. I had ſome Converſation with my Lord upon that Subject, and it was upon the Occaſion of my Lord's ſending for me to know why I had not complied with a Propoſal of the Maſters, to pay 500 *l.* towards making good Mr. *Dormer*'s Deficiency. I ask'd, whether it was his Lordſhip's Propoſal, or whether it was a Propoſal from ſome of the Maſters. My Lord ſaid, it was mention'd by the Maſters, and he approv'd of it; and as the reſt had complied, he hoped I would.

Mr. *Sol. Gen.* You need not now give a particular Account of this; this will be proper on another Occaſion; that I deſire to ask you now, is only in general, whether before the 21ſt of *January* 1723. you had any Converſation with my Lord about the Deficiency of the Maſters, and that there was Reaſon to ſuſpect a Deficiency in ſome of the Maſters?

Mr. *Lightboun*. I did not mention any particular Perſon, but only that an Accident had lately happen'd, and as it had happen'd, it might happen again; but I was far from mentioning any Maſter by Name, for I might thereby have made my ſelf liable to an Action.

Mr. *Sol. Gen.* We don't deſire to ask him whether he mention'd any particular Maſter, but only in general, whether he did not ſay he had Grounds to ſuſpect ſome of them? The Queſtion is in general.

Mr. *Com. Serj.* The Queſtion was firſt ask'd in general, but the Anſwer not coming out to their Satisfaction, they now apply it to a particular Fact, to which the Anſwer required is only Yea and No. This we apprehend not to be altogether ſo regular, we therefore deſire the Queſtion may be asked in other Terms.

Mr. *Sol. Gen.* My Lords, I will ask the Queſtion in general, whether he gave any Intimation in general, that there might be a Suſpicion of the Maſters?

Mr. *Lightboun*. I did in general acquaint my Lord, as this Accident had happen'd, I did not know how ſoon it might happen again. The Year 1720. had made great Havock, and I did not know what Effect it might have had amongſt us.

Mr. Serj. *Pengelly*. I deſire Mr. *Lightboun* may be ask'd, whether he can recollect that he had any Diſcourſe with my Lord *Macclesfield* to that Effect at any other Time before *January* 1723.

Mr. *Lightboun*. My Lords, I can't confine my ſelf to a particular Time. I have had the Honour of many Converſations with my Lord *Macclesfield* on this Subject, and what paſſed at one particular

Time

Time more than another, I can't remember. I have often had the Honour to hear his Lordſhip mentioning the Methods which he thought of, to prevent it, and to propoſe ſuch Methods as I thought of, but I can't tell all the particular Times.

Mr. Serj. *Pengelly.* I deſire he may be ask'd, whether from the Converſation which paſs'd between the Earl of *Macclesfield* and himſelf, it appear'd to him, that the Earl had any Suſpicion of a Want of Subſtance in the Maſters?

Mr. *Lightboun.* My Lord, when I mention'd it, ſeemed unwilling to think ſo. He ſaid he hoped not; he hoped there was no manner of Danger, they were all recommended to him for Men of Fortunes, or to that Effect. Latterly, this laſt Year, when my Lord was talking of this Matter, he ſeemed to think there was a Neceſſity that there ſhould be an enquiry into this Affair: and when the Maſters were ordered to bring in their own Accompts, I remember I told my Lord I queſtioned if they were able to do it. My Lord ſaid he hoped it, and wiſh'd it.

E. of *Abington.* If Mr. *Lightboun* be left to his own Diſcretion, to relate without Interruption whatever he can recollect that paſſed between him and Lord *Macclesfield* before *January* 1723. when this Declaration was made in Court, it may give your Lordſhips a fuller Light and Satisfaction.

Mr. *Lightboun.* I don't remember to have had any particular Converſation about the Abilities of the Maſters, farther then I have mentioned to your Lordſhips. I have told you that I did give ſome Hints in a doubtful Manner, that I was diſſatisfied; but it would very ill have become me to have mentioned particular People whom I was doubtful of.

Mr. Serj. *Pengelly.* My Lords, we proceed now to examine ſome Witneſſes upon the Article relating to the Maſters coming in, and in what manner the Money was paid upon their Admiſſion, either on a Surrender, or Death of a former Maſter; and out of what Fund that Money was paid. We beg leave to call Mr. *Kinaſton.*

Mr. *Kinaſton* called.

Mr. Serj. *Pengelly.* We beg leave he may be ask'd, in relation to his Treaty with Mr. *Rogers*, when he came into his Office? and in what Manner the Money paid for the Office was raiſed?

Mr. *Kinaſton.* It was in *May* 1721.

Mr. *Com. Serj.* Before Mr. *Kinaſton* anſwers to this, we hope the Managers ſhall intimate to your Lordſhips, that they have Evidence to apply this to the Lord who now ſtands accuſed; otherwiſe a bare Diſcourſe between Mr. *Rogers* and Mr. *Kinaſton*, cannot affect the Earl of *Macclesfield.*

Mr. *Lutwyche.* I apprehend this Interruption is very unneceſſary, It is the firſt part of the Article we are going to prove, that it was a Practice among the Maſters in Chancery, to pay the Money for their Places out of the Suitors Money; and that though the Chancellor had good reaſon to ſuſpect or know this, yet he applied no Remedy or Redreſs, but let it go on for his own Benefit: Therefore we muſt begin with the firſt part of the Article. They are not to examine and ask the Managers, whether they have any Proof of the latter part of the Article; we are beginning with the firſt part of the Article, and then ſhall bring it home to the noble Lord.

Mr. *Sol. Gen.* We ſhall prove the whole, that there was ſuch a Practice, and that it is reaſonable to think the noble Lord knew it, or had reaſon to ſuſpect it, and did not prevent it. We muſt firſt begin with the Practice.

Mr. Serj. *Pengelly.* My Lords, we deſire he may give your Lordſhips an Account of the Methods taken at the time he came into the Office, of ſelling and paying for thoſe Offices, and in what Manner the Agreement for his Office was tranſacted?

Mr. *Kinaſton.* My Lords, I treated with Mr. *Rogers* for the Sale of his Place in *May* 1721. I did underſtand them, and had heard before, that the Method was, that they retained ſo much of the Money belonging to the Office for their Places, and that ſuch had been the Practice. I did agree with him, and entered into Articles to pay him 6000 *l.* for his Place. I went for ſome time into the Country, and when I was there, he wrote to me, and told me that he deſigned to reſign the Place on the 9th of *Auguſt.* I did come up to Town, and on the 9th of *Auguſt* I gave him a Bond for 6000 *l.* Then I went with him to my Lord *Macclesfield*, and was ſworn in Maſter. There was a general Order for him to deliver over the Effects and Securities to me; after this, he delivered up the Bond which I had given him, and retain'd ſo much Money belonging to the Suitors of the Court, as amounted to 6000 *l.* He paid me nine Pounds, and delivered me up my Bond, and I gave him a Receipt for 6009 *l.*

Mr. Serj. *Pengelly.* I deſire to know what was paid for his Admiſſion?

Mr. *Kinaſton,* 1500 Guineas were paid to Mr. *Cottingham* by Mr. *Baily.*

Mr. Serj. *Pengelly.* How was it repaid?

Mr. *Kinaſton.* In *February* afterwards, I ſtated an Account with the Perſon that was my Caſh-Keeper and kept my Money, in relation to the Money receiv'd and paid, and he charged me with the 1575 *l.* and deducted it out of the Money of the Suitors which he had received.

Mr. Serj. *Pengelly.* I deſire he may be asked, how much Caſh, what Sum of Money, came to his Hands from Mr. *Rogers?*

Mr. *Kinaſton.* Something above 20000 *l.*

Mr. Serj. *Pengelly.* I deſire he may be asked, whether when theſe Effects were by the Order of Transfer delivered from Mr. *Rogers* to him, there was any Perſon preſent on behalf of my Lord *Macclesfield*, to ſee them delivered over?

Mr. *Kinaſton.* No.

Mr. Serj. *Pengelly.* Was there any Account demanded of him afterwards, either by my Lord Chancellor or his Agent, of the *Quantum* of the Effects or Caſh?

Mr. *Kinaſton.* I don't remember there ever was.

Mr. Serj. *Pengelly.* I beg leave to ask, whether at that Time he had Money enough of his own to pay Mr. *Rogers* 6000 *l.* for his Place, and 1500 Guineas to my Lord *Macclesfield* for his Admiſſion?

Mr. *Kinaſton.* Yes, I believe I had more Money at that time, but it was out upon Security; I was worth more.

Mr. Serj. *Pengelly.* What was his Inducement to come into this Office?

Mr.

Mr. *Sol. Gen.* Or, I would ask it in other Words, whether the easiness of his paying for his Place was not one Thing that induc'd him to Purchase?

Mr. *Kinaston.* Yes, I believe it was one Inducement to me to purchase the Place.

Sir *Wm. Strickland.* I beg leave to ask another Question. Mr. *Kinaston* says he had more Money of his own at that Time, but I desire to know, whether he could have paid 7575 *l.* which he gave for his Office, unless he had paid it out of the Suitors Money?

Mr. *Kinaston.* No, I could not have paid the whole.

Mr. Serj. *Probyn.* If the Gentlemen have done, I desire he may be asked, what Money he had of his own at that Time, either in Cash, or in his Bankers Hands, or in Security?

Mr. *Kinaston.* I really cannot tell, I believe I might have between 2 and 3000 *l.*

Mr. Serj. *Probyn.* How much can you take upon you to say you had?

Mr. *Kinaston.* Really I cannot tell.

Mr. Serj. *Probyn.* Speak to the neareſt you can.

Mr. *Kinaston.* I believe I had about 2000 *l.* very near three in Money and Effects.

Mr. Serj. *Probyn.* What other Estate had you? Had you any real Estate?

Mr. *Kinaston.* I had an Estate settled upon me at my Marriage, no other Estate.

Mr. Serj. *Probyn.* I desire you to give an Account, whether you had any other personal Estate?

Mr. *Kinaston.* No, I do not remember I had, except you reckon Timber such.

Mr. *Com. Serj.* I desire, my Lords, he may be asked, what the annual value of his real Estate was?

Mr. Serj. *Pengelly.* I submit, whether he be obliged to tell his whole Circumstances?

Mr. *Kinaston.* I am very willing to tell, it was about 400 *l.* a Year.

Mr. *Com. Serj.* Whether he had not his Estate without Impeachment of Wast?

Mr. *Kinaston.* Yes.

Mr. *Serj. Probyn.* Of what Value might the Timber be?

Mr. *Kinaston.* I was once bid 2500 *l.* for it, but now they know I have an occasion to sell, they will not give me so much.

Mr. *Serj. Pengelly.* I beg leave he may be asked, whether at that Time his Father was living?

Mr. *Kinaston.* Yes, he was at the Time of my purchasing the Place.

Mr. *Serj. Pengelly.* As the Cash was above 20000 *l.* of what Value were the Securities?

Mr. *Kinaston.* Really I cannot tell, I have given in an Account of the Effects.

Mr. *Serj. Pengelly.* About what Sum?

Mr. *Kinaston.* I have given it in in my Accounts what it was.

Mr. *Serj. Pengelly.* To what Sum doth the whole both in Cash and Securities amount?

Mr. *Kinaston.* I believe under 50,000 *l.* about 46000 *l.*

Mr. *Serj. Pengelly.* The Securities as well as the Cash?

Mr. *Kinaston.* I mean the Securites and the Cash together.

Mr. *Serj. Pengelly.* Upon this Evidence, we submit it to your Lordships, whether the Timber upon his Estate was a proper Security for 50,000 *l.* to be put into his Hands.

E. of *Macclef.* He now represents his Estate to be 400 *l.* a Year. How was it reputed?

Mr. *Kinaston.* I believe about 500 *l.* per Annum.

Mr. *Plummer.* I desire to ask him, whether if he had felled every stick of Timber on his Estate, that and his personal Estate would have paid what he was to give for his Master's Place?

Mr. *Kinaston.* No, it would not.

Mr. *Serj. Pengelly.* My Lords, We make Use of this as a Proof of the former Article.

Mr. *Thomas Bennet* called.

Mr. *Serj. Pengelly.* My Lords, We desire he may be asked in what manner the Transfer of his Office was transacted, and how the Money was paid for his Masters Place?

Mr. *Tho. Bennet.* My Lords, When I treated with Mr. *Hiccocks* about the Surrender of his Office, one of the first Things he told me was, that I need raise no Money to come into this Office, for whatever Money we agreed for, should be deducted out of the Money to be paid over to me, which I understood to be the Money belonging to the Suitors of the Court.

Mr. *Serj. Pengelly.* What was done in pursuance of this?

Mr. *Tho. Bennet.* This encouraged me to go on and proceed, in order to come into this Office, I supposed this to be the Practice, else I had not gone in.

Mr. *Serj. Pengelly.* Whether that was generally reputed to be the Practice?

Mr. *Tho. Bennet.* I own I thought so. I was a younger Brother, and had not Money enough of my own to come into that Office.

Mr. *Serj. Pengelly.* We beg leave, that he may inform your Lordships how much he was to pay, and how it was raised and paid?

Mr. *Tho. Bennet.* The Sum I agreed to pay Mr. *Hiccocks* was 7500 *l.* and the Sum to my Lord Chancellor was 1500 Guineas, which is 9075 *l.*

Mr. *Serj. Peugelly.* We hope that he shall inform your Lordships how it was raised and paid.

Mr. *Tho. Bennet.* As to the 1500 Guineas, I acquainted your Lordships I borrowed it of my Brother, and the next Day returned it him again out of the Money I received of Mr. *Hiccocks.* As soon as I was admitted, I went to Mr. *Hiccocks*, and demanded of him the Suitors Effects. He paid me 1500 *l.* and told me I must give a Receipt for 9000 *l.* I told him, it was hard to have no more Money paid me, when he told me there was much more Cash in the Office, and that I had given my Lord *Macclesfield* more than he had offered to pay me: He said, he should pay me more afterwards, but he insisted on my taking of this now, so I took the 1500 *l.* and gave him a Receipt for 9000 *l.*

Mr. *Serj. Pengelly.* I desire he may be asked, whether upon any Occasion he had any Discourse with the Earl of *Macclesfield* relating to the method of his coming in, or about the re-payment of the 1500 Guineas he paid him.

Mr. *Tho. Bennet.* In order to give an account of this, I must acquaint your Lordships of the occasion of my waiting on his Lordship. Mr. *Holford* told me, that my Lord Chancellor had sent to him, and desired that he or my Brother *John Bennet* would endeavour to accommodate matters between Mr. *Hiccocks* and my self, on occasion of the Deficiency of my Accounts. Mr. *Holford* said he did not care to go, but my Brother did go to Mr. *Hiccocks.* He would do nothing, no Accommodation could be made; but my Brother told me that my Lord Chancellor would pay back to me the 1500 Guineas which he had received, so the matter with Mr. *Hiccocks* might be accommodated.

Mr. Serj.

Mr. *Serj. Pengelly.* When was this?

Mr. *Tho. Bennet.* It was about the time of our giving in our Accompts.

Mr. *Serj. Pengelly.* Was it before *Chriſtmas*, or after?

Mr. *Tho. Bennet.* It was before *Chriſtmas* laſt, in *December*, I think about the 7th of *December*. Upon that I asked my Brother, whether I might depend upon it, that my Lord Chancellor would pay back the 1500 Guineas? And he ſaid, Yes, he had it from his Lordſhip; and he did aſſure me I might depend upon it; but he ſaid nothing could be done with Mr. *Hiccocks*. Then I deſired them to acquaint my Lord with it; they both declined it, and deſired I would go my ſelf upon this Occaſion. I went, and I told my Lord, I was come to wait upon his Lordſhip to thank him for the kind Offer he had made to my Brother of returning the 1500 Guineas, and I wiſhed the ſame could be ſaid of Mr. *Hiccocks*, and I could prevail with him; but nothing could be done: I came to return his Lordſhip thanks; and I thought I ſhould have received the Money then. My Lord asked me to ſit down, and then told me if he had known I had been to give ſo great a Sum of Money for the Office, he would not have admitted me. I told him I did give ſo great a Sum, but immediately as ſoon as I was admitted. I enſured my Life to the Value of 8000*l.* which coſt me 400*l.* ſo that if I had died, no harm would have come to the Suitors. My Lord ſaid, it was very honourably done. Soon after that, he ſaid, he was very ſorry to ſee the *Items* that were put into my Accompt and Mr. *Kinaſton*'s in Relation to Sums in the Hands of an honourable Perſon; for, ſays he, that hath diſcovered the Method of purchaſing theſe Offices, that the Money is deducted out of the Suitors Money, which, ſaid he, I have always taken pains to deny, when ever I have been asked the Queſtion.

Mr. *Serj. Pengelly.* We beg Leave now to ask him, how much the whole of the Caſh, and Securities transferred from Mr. *Hiccocks* to him, amounted to?

Mr. *Tho. Bennet.* I believe near 100,000*l.*

Mr. *Serj. Pengelly.* I apprehend he ſaid before, he was a younger Brother, and had but little Fortune of his own; I deſire he may be asked whether any Care was taken by my Lord *Macclesfield* as to the transferring the Effects of the Suitors in Mr. *Hiccocks* Hands over to him? and whether any Perſon was employed by my Lord to ſee the Effects transferred over?

Mr. *Tho. Bennet.* No.

Mr. *Serj. Pengelly.* Whether there was any other Security for this great Sum of Money depoſited in his Hands, beſides what was made by this Inſurance on his Life?

Mr. *Tho. Bennet.* No, my Lords, I know of no other Security. That was a voluntary Act of my own, and I paid for it.

Mr. *Lutwyche.* My Lords, Mr. *Bennet* ſays, he had ſome reaſon to hope that the 1500 Guineas would be given him back again; I deſire he may be asked whether there was any ſubſequent Overture about paying the 1500 Guineas back again?

Mr. *Tho. Bennet.* My Lord Chancellor diſmiſſed me at that time, and told me, I ſhould not know by what means, or by what methods I ſhould receive the Money, or by whoſe Hands; but his Lordſhip would take Care that one way or other I ſhould receive it: He would not ſay how, becauſe I might be called upon to anſwer what Diſcourſe paſſed between his Lordſhip and me in another place.

Mr. *Lutwyche.* Was there any thing done upon that?

Mr. *Tho. Bennet.* Hearing nothing from my Lord Chancellor for a Fortnight after, I went to his Secretary, Mr. *Dixon*, and told him that I had uſed ſuch Expreſſions in my Accompt, that if the Money was not produced, it would oblige me to name my Lord Chancellor; and I deſired him to acquaint my Lord that I could not pay this Money, and that I muſt diſcover it in a Day or two. This was *Sunday* Night: The ſame Night Mr. *Dixon* returned from my Lord, and told me, that if Mr. *Holford* would be preſent the next morning at the payment of the Money at Mr. *Kinaſton*'s Chambers, that Mr. *Kinaſton* and my ſelf ſhould receive it. We were there the next day. Mr. *Dixon* came, but brought no Money, ſaid my Lord expected ſome Indempnification. We ſaid, as to an Indempnification we could give none. He ſaid he would go to my Lord. I was in hopes he would have brought the Money; but when he came back, he ſaid it was an Holyday, and no Money could be had, and deſired we would go to the Judges, and deſire two or three days time to produce this Money. I told him we could not do it, for that very Night the Report was to be laid before the King and Council. He then returned again to my Lord Chancellor, as he told us, and when he came back, he ſaid my Lord Chancellor was gone out. Upon that we gave in my Lord Chancellor's Name to the Judges, and the Gentlemen of the Bank, and they gave it in to the Council, as I am informed.

Mr. *Lutwyche.* My Lords, We deſire he may anſwer this Queſtion, Whether it was explained what that Indempnification was, which was expected, and in what manner it was to be?

Mr. *Tho. Bennet.* My Lords, Mr. *Dixon* explained it thus,——

E. of *Macclesfield.* I hope whatever Mr. *Dixon* ſaid, ſhall not affect me; but that they will produce him: He is able to ſpeak for himſelf.

Mr. *Lutwyche.* Then I only deſire he may be asked, what Officer Mr. *Dixon* was under my Lord Chancellor?

Mr. *Tho. Bennet.* Mr. *Dixon* was my Lord's Secretary.

Mr. *Lutwyche.* Whether at that time that you had the Diſcourſe with my Lord *Macclesfield*, you mentioned or ſaid any thing of Mr. *Dixon*'s having come to you, in my Lord *Macclesfield* name?

Mr. *Tho. Bennet.* No, My Lords, that was before Mr. *Dixon*'s coming to me.

Mr. *Lutwyche.* Did you take Notice at any time to my Lord *Macclesfield* of Mr. *Dixon*'s coming to you?

Mr. *Tho. Bennet.* No, I never ſpoke to my Lord Chancellor afterwards. This was the 27th of *December*, and it was the 7th of *December* that I waited upon my Lord.

Mr. *Serj. Pengelly.* We think it appears that Mr. *Dixon* was an Agent of my Lord *Macclesfield*'s: I deſire to know what the Nature of the Propoſal of Indempnification was, that he made?

E. of *Macclesfield.* I can't think Mr. Serjeant is in earneſt. Have they proved that he was em-

ployed by me? I have heard no proof of it, only Mr. *Serjeant* hath ſaid it. Mr. *Dixon* himſelf is the proper Perſon to give an Account of what he told them from me. If they do inſiſt upon it, I muſt beg your Lordſhips Judgment.

Mr. *Serj. Pengelly.* If it is inſiſted upon by the Noble Lord, to diſavow the Proceedings of his own Agent, we will wave it.

E. of *Macclesfield.* I neither avow nor diſavow, but I object to the Evidence of this Gentleman about the Diſcourſe of what Mr. *Dixon* ſaid, who is living, and can ſpeak for himſelf.

Mr. *Serj. Pengelly.* If the Noble Lord will ask him any thing, he may, we have done.

E. of *Macclesfield.* I beg leave that Mr. *Bennet* may be asked two or three Queſtions: He has indeed given Evidence which greatly ſurprizes me. In the firſt place I deſire he may inform your Lordſhips, whether, when he was with me, he did not tell me that if Mr. *Hiccocks* would pay 2000 *l.* he would make good the whole Money?

Mr. *Tho. Bennet.* No, I did not ſay ſo; I could not make good the whole Money, or any thing like it. I ſaid that ſuch a Report had been ſpread, that I propoſed, that if Mr. *Hiccocks* would pay me 2000 *l.* I would anſwer the reſt; but I was not able.

E. of *Macclesfield.* I would be glad to know how he came to tell me of a Report of his own Act: Was it a Report without any Foundation?

Mr. *Tho. Bennet.* I went to Mr. *Hiccocks*, and told him I wanted 6000 *l.* but he ſaid if 2000 *l.* would do, he believ'd he could lend me that. Lend it me, ſaid I; if you give me 2000 *l.* it is ſomething. And this was the Foundation of this Report.

E. of *Macclesfield.* I cannot give Evidence my ſelf to diſprove him in this; and therefore I deſire to know whether he has ſaid to any other Perſons, that if Mr. *Hiccocks* would pay him two thouſand, or three thouſand Pounds, or thereabouts, he would pay the reſt?

Mr. *Tho. Bennet.* I might ſay, I would endeavour to raiſe the reſt; but I never ſaid I would pay the whole, for I knew I was not able.

E. of *Macclesfield.* Mr. *Bennet* underſtands my Queſtion, to which he hath given no Anſwer. My Queſtion is, Whether he hath not told ſome other People, that in Caſe Mr. *Hiccocks* would pay 2 or 3000 *l.* he would pay all the reſt?

Mr. *Tho. Bennet.* No, my Lords, I never told any Body that I would pay the reſt; but I believe I might ſay, if Mr. *Hiccocks* would give me 2 or 3000 *l.* I would ſtand the Hazard; for I did not expect that all the Money ſhould be taken out of my Hand.

E. of *Macclesfield.* I deſire he may be asked, whether at that time he was with me, I did not ask him, with what Conſcience and Honeſty he could buy a Place, when he had not Money to pay for it? or whether it was not in anſwer to that, that he told me that he had inſured his Life?

Mr. *Tho. Bennet.* My Lord did ſay ſo to me. I anſwered, I had not Money; that I had not bought the Place, had it not been for the Caſh of the Suitors; and that I had ſince ſecured 8000 *l.* on my Life, in order to ſecure the Suitors.

E. of *Macclesfield.* I deſire to know what viſible Eſtate the Gentleman then had, and of what yearly Value?

Mr. *Tho. Bennet.* My Lords, when I came into the Office, I believe I had about 250 *l.* a Year, or thereabouts.

E. of *Macclesfield.* I deſire to know whether he was married before?

Mr. *Tho. Bennet.* I was.

E. of *Macclesfield.* What Fortune had you with your Wife?

Mr. *Tho. Bennet.* The Fortune I had with my Wife, was in the Whole between 2 and 3000 *l.* part of it was an Houſe.

E. of *Macclesfield.* What was the Value of that Houſe?

Mr. *Tho. Bennet.* I had not let it then, but ſince my coming into the Office I have let it for 90 *l.* a Year.

E. of *Macclesfield.* I deſire to know if he did not keep his Coach and Equipage at that time?

Mr. *Tho. Bennet.* I did ſet up my Coach in the unfortunate Year 1720. I was once worth 20,000 Pounds, but loſt it all, and became much indebted; the Eſtate I had of my own was mortgaged for more than it was worth.

E. of *Macclesfield.* Whether he was married in the Year, 1720?

Mr. *Tho. Bennet.* No, I was not.

E. of *Macclesfield.* I deſire to know what Eſtate he hath given into the Court of Chancery?

Mr. *Tho. Bennet.* That Accompt lies upon the Table.

E. of *Macclesfield.* What yearly Value is that?

Mr. *Tho. Bennet.* About 900 *l. per Annum*; part of it is ſettled, the reſt mortgaged, and an Annuity charged on it more than it is worth.

E. of *Macclesfield.* Has any Eſtate been purchaſed with your Money, or Money which came from you, ſince you was a Maſter?

Mr. *Tho. Bennet.* Part of that given in was ſo, 68 *l. per Annum*, and 40 *l. per Annum.*

E. of *Macclesfield.* Has any other Eſtate been purchaſed with your Money, or Money which came from you, ſince you was Maſter?

Mr. *Tho. Bennet.* None, but what I have given in. I have given in every Shilling.

Mr. *Com. Serj.* My Lords, I deſire he may be asked, whether he was not at the Time of his becoming Maſter in Chancery, in Poſſeſſion of the Office of Clerk of the Cuſtodies?

Mr. *Tho. Bennet.* Yes, I was.

Mr. *Com. Serj.* Now, my Lords, it will be very proper to ask him what that was ſold for, that the Value of his Eſtate may be known.

Mr. *Tho. Bennet.* That may affect me, and my Succeſſor.

Mr. *Lutwyche.* I don't know whether we need put you in mind, that the late Act of Parliament only indempnifies the Maſters, but there is none to indempnify the Clerk of the Cuſtodies.

Mr. *Com. Serj.* Which way it will affect Mr. *Bennet* I don't know. I apprehend no Action can lye againſt him for the Money he received, nor any criminal Proſecution or Information. But that I may not miſpend your Lordſhips time; I deſire Mr. *Bennet* may inform your Lordſhips of the yearly Value of the Place.

Mr. *Tho. Bennet.* It is about 250 *l.* a Year.

E. of *Macclesfield.* A Patent for Life?

Mr. *Tho. Bennet.* Yes, my Lords.

Mr. *Serj. Probyn.* How much hath it been ſold for?

Mr. *Tho. Bennet.* I can't tell what it hath been ſold for: It may have been once ſold for about 1200 *l.*

Mr. *Serj.*

Mr. *Serj. Probyn.* At that time when you ſurrendered, what might it have been ſold for?

Mr. *Tho. Bennet.* I beg leave to ſubmit, whether I am obliged to anſwer that Queſtion.

Mr. *Serj. Pengelly.* If it was not ſaleable by Law, it was not worth a Farthing. I beg leave to put your Lordſhips in mind, that Mr. *Bennet* was excus'd Yeſterday from anſwering a Queſtion of the ſame Nature: The Councel hope that this Day, being a new Day, they may have Liberty to ask the ſame Queſtion over again.

Mr. *Com. Serj.* There was another Ingredient in your Lordſhips Reſolution Yeſterday. I hope it is no Injury to him to anſwer how much he hath known it to be ſold for; without mentioning by whom.

Mr. *Serj. Probyn.* We hope Mr. *Bennet* will anſwer the Queſtion, what is the moſt he hath known it to be ſold for?

Mr. *Plummer.* My Lords, I object to his anſwering that Queſtion, becauſe if he did ſell it himſelf, that might be the greateſt Sum that he hath known to be given for it, and that will ſubject him to a Penalty.

Mr. *Serj. Probyn.* We don't ask who gave it, or who received it; but what is the greateſt Price he hath known that Office to be ſold for?

E. *of Macclesfield.* He ſays he hath known it to be ſold for 1200 *l.* I deſire he may be asked whether he hath not known that it hath been ſold for more?

Mr. *Tho. Bennet.* I believe it hath been ſold for more.

E. *of Macclesfield.* And how much more?

Mr. *Weſt.* This Queſtion is an indirect way to come at that Queſtion that was denied them Yeſterday.

Sir *Will. Strickland.* My Lords, with humble Submiſſion, the Queſtion asked by the Noble Lord, tends directly to make Mr. *Bennet* tell what he ſold his own Office for; for if his own Office was ſold, it is probable that he ſold it for the greateſt Price; and to tell that, is to make him ſay what he ſold his own Office for.

Mr. *Lutwyche.* By this Method your Lordſhips Reſolution of Yeſterday will be evaded. We took it then, that the Witneſs was not obliged to diſcover what he ſold the Office for. Now they are asking what is the greateſt Price he knew the Office ſold for? Then the next Queſtion may be, to whom was the Office ſold, and by whom was it ſold? Therefore we muſt humbly ſubmit it to your Lordſhips, that it is not a Queſtion to be asked.

Mr. *Com. Serj.* To object to a Queſtion becauſe another may follow, is odd arguing. When ſuch a Queſtion is made, it will be then time enough to oppoſe it: Therefore I hope that we ſhall go on.

Mr. *Serj. Probyn.* My Lords, I apprehend this Queſtion is proper, and the Anſwer to it is neceſſary.

Lord *Lechmere.* Your Lordſhips will obſerve ſome Rules in your Proceedings. An Objection hath been made: An Anſwer hath been given: Both Sides inſiſt upon your Lordſhips Judgment: That being done, they muſt withdraw. Therefore I deſire they may withdraw.

E. *of Macclesfield.* The Reply is not yet made; ſomething has been ſaid by the Gentlemen who are Managers by way of Objection to the Queſtion that was propoſed, which, if they inſiſt upon, I deſire my Councel who are to reply, may be heard before they withdraw.

Mr. *Serj. Probyn.* The Managers for the Houſe of Commons have been pleaſed to examine into the Circumſtances of Mr. *Bennet*, at the time he was admitted Maſter, in order to ſhew that he was then not of Subſtance fit to be intruſted with ſo great a Sum of Money. We are then in Duty obliged to examine him as to that Subſtance, and the Value of his Effects. He hath told your Lordſhips what Eſtate he hath in Land; we are now to examine him as to his Perſonal Eſtate: He hath told us he had an Office, the Clerk of the Cuſtodies; that he hath parted with it; the Money ariſing by that Office muſt be reckoned as part of his Perſonal Eſtate. To come at the Value of the Office, we do not ask him any Queſtion that makes him liable to a Penalty; but ſuch a Queſtion, where the Anſwer to it may be with Safety; and that is, what is the greateſt Sum he hath known to have been given for the Office of the Clerk of the Cuſtodies? He may anſwer this without involving himſelf in any Difficulties, for it is not asked what he himſelf hath ſold that Office for? No Anſwer to this general Queſtion can affect him with any ill Conſequence.

Dr. *Sayer.* I humbly apprehend this is no way irregular. We are inquiring about his Effects; it is owned he had the Clerk of the Cuſtodies, therefore that muſt be a part of his Perſonal Eſtate: The Anſwer to our Queſtion can't any way involve him in Danger, or ſubject him to any Penalty; becauſe it doth not neceſſarily follow that he ſold his Place at the greateſt Price that he ever knew it ſold for. We ſubmit it, whether it is not a Queſtion fair with regard to the Witneſs, and proper to be put to him.

Mr. *Robins.* We agree that where he may ſubject himſelf to a Loſs, there is no forcing him to anſwer; no Perſon is bound to accuſe himſelf. But this is only a Matter of Diſcovery what the Value of this Office is; the Anſwer cannot affect him; and therefore we hope we ſhall have an Anſwer.

Mr. *Strange.* My Lords, I am ſurprized to hear it ſaid that this is not a Queſtion material for the Noble Earl's Defence: Surely it is as material for us to increaſe his Eſtate, as it is for them to diminiſh it. They have already examined into Particulars, to ſhew what ſmall Subſtance he was of, and what the Eſtate he had was mortgaged for: The proper Anſwer to be given to that, as far as it will go, will be to ſhew that he had other Eſtate and Effects, and we are not able to ſhew that without examining him. I humbly ſubmit it therefore that we are as proper to go into that Evidence, as they were; it is equally material; and as they have examined to it on behalf of the Commons, we are intitled to examine to it likewiſe on behalf of the Noble Earl.

E. *of Macclesfield.* I apprehend the Objection is, That he is not to be asked a Queſtion, which if he anſwers he will charge himſelf with a Crime or Penalty. Whatever Anſwer he makes to this Queſtion cannot charge him: Let him Anſwer and ſay that he hath known this Place ſold for 1000, 1500, or 2000 *l.* can that be given in Evidence ſo as to affect him? Therefore the Queſtion to Day is not the ſame as was asked Yeſterday: It was then asked, what he had received for his Place? and if he had

had anſwered and ſaid what he had received, it would have been a Confeſſion, which would have convicted him: But if the Anſwer be, That he knows it was ſold for ſuch a Price, and that is given in Evidence, by that Anſwer it doth not appear that he ſold it: Therefore upon that I humbly ſubmit to your Lordſhips, and we are ready to withdraw.

Mr. *Serj. Pengelly.* This is by a Side-wind to know your Lordſhips Opinion upon the 9th Article.

E. *of Macclesfield.* I beg leave to interrupt that worthy Gentleman. I agree that the Commons that bring in the Charge, have a right to Reply; but with Submiſſion this is an Objection ariſing from my Councel, and the Reply belongs to them.

Mr. *Serj. Pengelly.* My Lords, we apprehend the Objection ariſes from the Managers, and therefore the Reply belongs to them. The Managers made the Objection, therefore we beg Leave to obſerve, that this is in Conſequence to deſire your Lordſhips Judgment upon the 9th Article, Whether the Office of the Clerk of the Cuſtodies be ſaleable by Law, or no? If he is obliged to anſwer this Queſtion, it is upon a ſuppoſition that the Tranſaction is lawful: Therefore in an Affair of this Nature, there can be no other View but to get an Opinion upon this Article. My Lords, we apprehend this Proceeding is in Conſequence the ſame as if a Queſtion was propoſed to your Lordſhips, whether my Lord *Macclesfield* could by Law ſell the Place of Clerk of the Cuſtodies?

Mr. *Lutwchye.* My Lords, I muſt beg leave to mention this to your Lordſhips. When it is conſidered upon what Foundation this Queſtion is asked, and what it doth mean, it can be only to elude your Lordſhips Reſolution Yeſterday, and to make that of no Effect. My Lords, there ſhould be always the greateſt Candour uſed before your Lordſhips, that no Tricks or Methods ſhould be made uſe of to ask that which ſhould not be asked. Now, my Lords, what is the Queſtion they are examining to, and the Uſe to be made of it? Here is a Perſon that is alledged to be of mean Ability, and the Queſtion is, What Subſtance and Eſtate he hath? and they would reckon into Part of his Eſtate an Office not ſaleable by Law, and ask him, what that Office is worth? From whence the Inference muſt be, that he ſold it.

E. *of Macclesfield.* That is not the Queſtion, what it is worth; but a particular Fact, what is the moſt that it hath been ſold for?

Mr. *Lutwyche.* What doth that tend to? The Queſtion is, What Eſtate this Gentleman had that could enable him to pay this Money for this Office? They have examined him about his own Eſtate, and his Wife's Eſtate, but then there is another Part of his Eſtate; which was this Office of Clerk of the Cuſtodies. What is that? It is that very thing which we ſay it is unlawful to ſell. Therefore we ſubmit it to your Lordſhips as no way material to the Defence of the Lord. We hope your Lordſhips will not admit that to be done by an indirect Method, which would not be admitted to be done by a direct one.

Ordered to withdraw. Which was accordingly done; and all Parties concerned being after ſome time call'd in again,——

The Lord Chief Juſtice *King* declared to them, That it was the Order and Judgment of the Lords, that the ſaid Queſtion was not to be asked.

Mr. *Plummer.* I would ask Mr. *Tho. Bennet* one Queſtion, Whether every thing he had in the World at the Time of his Purchaſe of the Maſterſhip, was worth the Money he gave for it?

Mr. *Tho. Bennet.* All I had in the World was not worth it.

Mr. *Serj. Probyn.* My Lords, Mr. *Bennet* ſays he mortgaged his Eſtate for more than it was worth; I deſire he may be asked whether he knew at that time, that is was not worth ſo much as it was mortgaged for?

Lords. No, No.

Mr. *Plummer.* My Lords, I beg leave to ask this Queſtion, and I hope it will be very proper, that is, I deſire to ask Mr. *Bennet,* as he hath given an account of a Converſation with my Lord *Macclesfield*; I deſire to know if my Lord *Macclesfield* at the time of his Admiſſion into his Office, did ask him what he was worth?

Mr. *Tho. Bennet.* My Lord *Macclesfield* never asked me any Queſtions in Relation to my Circumſtances, or any thing like it.

E. *of Macclesfield.* My Lords, I deſire he may be asked, whether I had any notice of his Loſſes by the *South-Sea*?

Mr. *Tho. Bennet.* Not that I know of: I don't know that my Lord *Chancellor* had any Notice of it.

Mr. *Serj. Pengelly.* My Lords, if the Councel have done, we ſhall not give your Lordſhips any farther Trouble on theſe two Articles: Both of them are as clearly and as fully proved and ſubſtantiated as it is poſſible. It comes out now upon the Examination, that, tho' ſeveral Maſters were intruſted with 40, 50, or 80,000 *l.* they were not of any competent Subſtance, not really worth what they paid for their particular Places. As to the manner of their paying for their Places, if we have not given a direct Evidence that his Lordſhip knew it, yet the Practice and Notoriety of the Fact being prov'd, and that it was thus generally underſtood, is a reaſonable Evidence in it ſelf, and by the Notice the Lord took of it himſelf by the ſeveral Queſtions he hath asked, we think it is yet clearer. We humbly ſubmit whether upon this Evidence every part of theſe two Articles is not ſufficiently proved? We depend upon the Examination already taken, and will take up your Lordſhips Time no farther.

Then the Managers and the Councel were directed to withdraw; and the Lords adjourned to the next Morning at Ten a Clock in the Forenoon.

Saturday May 8*th. The Third Day.*

THE Lords being ſeated in their Houſe, Proclamation was made by the Serjeant at Arms for Silence; and another Proclamation, That all Perſons concerned were to take Notice, that *Thomas Earl* of *Macclesfield* now ſtood upon his Tryal, and they might come forth in order to make good the Charge.

Lord Ch. Juſt. *King.* Gentlemen of the Houſe of Commons, you may proceed in your Evidence.

Mr.

Mr. *Gybbon.* My Lords, Your Lordſhips having already heard what has been offered in Support of the preceding Articles, I am commanded by the Commons to aſſiſt in maintaining the 13th and 14th Articles of their Impeachmen againſt the Earl of *Macclesfield.*

The Charge in theſe Articles is, That the Earl knowing Mr *Dormer* (one of the Maſters in Chancery) had diſpoſed of great part of the Suitors Money for his own private Advantage, by which there became and ſtill continues a Deficiency of at leaſt 25000 *l.* and that Mr. *Dormer* abſconded upon that Occaſion; That application was made to the Earl thereupon, who inſtead of taking proper Methods to compel Mr. *Dormer* to make Satisfaction to the Suitors (from an Apprehenſion that a publick Diſcovery of the ſaid Deficiency might leſſen the unjuſt Gain the Earl propoſed to himſelf, by ſelling and diſpoſing of the ſaid Offices) did endeavour by many indirect Practices to conceal from the Suitors of the Court the true State and Condition of the ſaid Office, and did falſly and deceitfully declare that Mr. *Dormer* was only gone to take the Air; that he would return in a little time, and all would be well. That Mr. *Dormer* having towards a Satisfaction to the Suitors of the Court, aſſigned to Mr. *Edwards* (who ſucceeded him in his Office of Maſter) a Debt of 24046 *l.* 4*s.* 0*d.* due from Mr. *Wilſon* (a Banker) to Mr. *Dormer*, to the intent the Money received on that Account ſhould be applied as the Court of Chancery ſhould direct, the Earl of *Macclesfield*, for the unlawful Purpoſes aforeſaid, without regard to the Intereſt of the ſaid Suitors, by Colour of his ſaid Office, did in an unwarrantable, clandeſtine, and unuſual Manner, authoriſe, direct and eſtabliſh a precarious and trifling Compoſition with the ſaid *Wilſon*, upon his paying 1463 *l.* 2*s.* 1*d.* and aſſigning 10,000 *l.* part of a Debt of 22,060 *l.* 12*s.* 5*d.* pretended to be due to the ſaid *Wilſon* from *Edward Poulter*, in Diſcharge of the ſaid Debt; and to that End, on Mr. *Hiccocks*'s Report, then one of the Maſters of the ſaid Court, without any Attendance ordered or had thereupon, and without Notice to the ſaid Suitors, did by a private Order, not made in open Court, order Mr *Edwards* to accept the ſaid Compoſition in full Diſcharge of the ſaid Debt; which ſaid *Poulter* was a Perſon Inſolvent, and has ſince abſconded for Debt, and none, or very ſmall part of the ſaid 10,000 *l.* has been, or is ever likely to be received.

Your Lordſhips will pleaſe to obſerve, that the Earl is charged with the higheſt Breach of Truſt in relation to the Suitors of the Court of Chancery, and to have committed that Breach of Truſt for the moſt unjuſtifiable End.

The Crimes, my Lords, ſtated in theſe Articles, are in themſelves ſo heinous, they need no aggravation; and I think the noble Lord's Anſwer ſhews they are capable of no Excuſe.

He is pleaſed to ſay, " That Mr. *Dormer* be-
" ing out of Reach, his Effects unknown, ex-
" cept the Stock, which could not be transferred
" without his Concurrence, and the Earl ſeeing
" no other way open to get any thing for the
" Suitors, and being made believe, if a Deficiency
" ſhould happen, the ſame ſhould be made up by
" other Maſters; did agree, that in Caſe Mr.
" *Dormer* would come over, and make a full Diſ-
" covery of all his Effects, and aſſign the ſame
" for the benefit of the Suitors, the ſaid Earl
" would allow him his Liberty on that Condi-
" tion, and not otherwiſe.

The noble Lord ſays, No other way was open to get any thing. Sure, my Lords, the granting of a Sequeſtration would have been one and the ſpeedieſt way to have found out and ſecured the Effects; but it might have been a way too open; for it muſt have publiſhed the Deficiency of the Office; whereas Mr. *Dormer*'s coming home, and quietly reſigning, huſhed all Enquiry.

What the Earl means by being made to believe the Deficiency ſhould be made up, I am at a Loſs, my Lords, to know; made believe! how, or by whom! It does not appear the Maſters entred into any Contract to do it; and could his Lordſhip think any Diſcourſe between him and the Maſters (if ſuch there was) could be a ſufficient Security for the Suitors of the Court?

But ſuppoſe the Maſters had contracted to ſupply the Deficiency, I ſubmit to Your Lordſhips how far that Contract would have been juſtifiable; for how ſhould that Supply ariſe? If out of the Suitors Money in the Maſters Hands, that was only ſupplying one Deficiency by making another; and if it was to be out of their own Eſtates, that likewiſe, by leſſening the Subſtance of the Maſters, would diminiſh the Security of their own Suitors; And what, my Lords, could induce the Maſters to enter into ſuch a Contract? I can imagine nothing, but to conceal the Deficiency, in order to raiſe a Value on their own Places upon their Reſignations. I therefore ſubmit to your Lordſhips, whether the Earl's Anſwer is not an implyed Confeſſion of an Endeavour to conceal this Deficiency, in order to keep up the price of the Office? Your Lordſhips obſerve on what Condition the Earl ſays he permitted Mr. *Dormer* to come over. But I do not find the noble Lord alledges, that in order to gain the End propoſed, Mr. *Dormer* was examined on Interrogatories touching the Debts due to the Suitors of the Court, or to what Eſtate or Effects he had to anſwer the ſame: We can ſhew your Lordſhips there was no ſuch Examination. We ſhall prove, that Mr. *Dormer* did not give a ſatisfactory Account of his Ballance, and with great Difficulty was prevailed on to convey his Eſtate for the Benefit of the Suitors: But yet, my Lords, he continued to have his Liberty. How the Earl will account for thoſe Proceedings, I leave to your Lordſhips Conſideration: I can ſee no poſſible Account can be given but this, that an Examination on Interrogatories touching the Debts of the Suitors, and Mr. *Dormer*'s Anſwer and Confinement, muſt have publiſhed the Deficiency of the Office. The Earl is pleaſed to ſay, " He did not
" doubt but the whole Debt upon the ſaid
" *Fleetwood Dormer* would be paid.

I preſume he did not doubt but it would be, becauſe he knew in Juſtice it ought to be paid; and ſince it is before your Lordſhips, I likewiſe do not doubt but it will be paid.

The noble Lord in his Anſwer is pleaſed to quote on ſome Occaſions the Example of his Predeceſſors; I wiſh, for the Sake of the unhappy Suitors, and for the Honour and Juſtice of the Court of Chancery, he had here followed the Steps of his Predeceſſors in the Caſe of Dr. *Eddisbury*.

" The noble Lord inſiſts, He does not remember " any Application made by the Maſters for " any Aſſiſtance of the Court, touching the Perſon or Effects of Mr. *Dormer*, but what he " granted, as far as he thought tended to the Benefit of the Suitors.

We ſhall offer Proof to the contrary: But had that been ſo, was that, my Lords, ſufficient? Was the Earl to wait the ſetting of a Proſecution on Foot, 'till Application made by the Maſters? It was not probable many of them (who had bought at high Prices, and on Reſignations, were to make the moſt of their Places) would apply for the ſecuring the Perſon or Effects of Mr. *Dormer*, they would not willingly have had a Maſter impriſoned; the Diſcovery of a Deficiency in him would have made other Suitors apprehenſive that the ſame might have happened to them; for every one knew how freely thoſe Gentlemen trafficked in the fatal Year of 1720. The very Notion of a Deficiency would have put the Suitors on an Inquiry, and upon calling the Money out of the Maſters Hands. Could then the Earl expect they would intereſt themſelves much in an Examination of this Kind? But was it leſs his Duty to enquire and give all neceſſary Orders, and take all proper Precautions for the Suitors Safety, becauſe the Maſters neglected it? No, certainly, unleſs for the Reaſon aſſigned in the Article.

The Earl ſays, " He did never endeavour to " conceal the true State and Condition of the " Office from the Suitors, nor did any of them, " until very lately, apply to him to look into " the ſame.

He well knew, that many of them called for their Money, and were ordered their whole Demands, while Mr. *Edwards* had wherewithal to pay; but thoſe unhappy Suitors, who did not know of the Deficiency, and from ſuch Orders for the whole Money might well be perſuaded there was no Deficiency, and conſequently did not complain, have now, I fear, a melancholy Caſe. And with what Grace the Earl can inſiſt, that no Suitors ever did, or at leaſt till very lately, complain, I leave to your Lordſhips Conſideration.

The Earl is pleaſed to ſay, " He remembers " nothing of his uſing the Expreſſion charged " in the Article, either before or after he knew " of Mr. *Dormer*'s abſconding.

I believe the noble Lord, on a little Recollection, will eaſier call to Mind what he ſaid on this Occaſion, than be able to give a juſtifiable Reaſon for it.

He is pleas'd to ſay in his Anſwer to the 14th Article, " He quitted all the Advantage of the " Diſpoſal of Mr. *Dormer*'s Office.

The Gentlemen, who have ſpoke before me, have, I hope, ſufficiently made it appear to your Lordſhips, that there could be no ſuch legal or juſt Advantage. Where then is the Generoſity? A Sum of Money, which he ought not to have taken, is given up towards anſwering the Debt of the Court, for which I take it his Lordſhip himſelf is anſwerable.

He is pleaſed to ſay, " That after Mr. *Dor-* " *mer*'s aſſigning Mr. *Wilſon*'s Debt to Mr. *Ed-* " *wards*, the Earl believes Mr. *Edwards* uſed " great Endeavours to obtain Payment and Sa- " tisfaction of the ſaid Debt from Mr. *Wilſon*; " but finding all Endeavours fruitleſs, and that " Mr. *Wilſon* had ſtopped Payment, and was in no " Condition of paying his Creditors the whole " of their Debts, but had offered to come to a " Compoſition, and to pay them in Proportion " the utmoſt he was able, Mr. *Edwards* there- " upon petitioned his Lordſhip.

What thoſe great Endeavours were, I am, my Lords, at a loſs to know; for I can't find there was any Commiſſion of Bankruptcy taken out againſt *Wilſon* (though that was adviſed and preſſed as a ſafe and neceſſary Method) no Suit in the Court of Chancery, or in any other Court commenced againſt him, to get in this Debt, or that he was ſo much as ſerved with any Proceſs about it. How then the Earl can ſay, that all Endeavours were found fruitleſs, I leave to your Lordſhips Conſideration.

He is pleaſed to ſay, " Mr. *Hiccocks* reported, " 'twas his Opinion the accepting the ſaid Com- " poſition would be for the Benefit of the Per- " ſons entitled to receive the ſame.

My Lords, It does not appear Mr. *Hiccocks* had looked much into *Wilſon*'s Circumſtances, had examined the Particulars of his Books on Oath, had called the Creditors before him to enquire into the Juſtice of their Debts, or to know the Amount; but yet took upon him to apportion Part of *Poulter*'s Debt, as a Compoſition for the Suitors of the Court, though it will appear that *Wilſon* paid ſeveral of his Creditors afterwards their full Demands.

Strange Proceeding ſure in an Affair of this Nature! for which I will not pretend to Account. But, my Lords, I cannot but obſerve that the two Maſters, who were employed to take Care on this important Occaſion, for the innocent unhappy Suitors, were very ſoon (pending the Affair) allowed to ſell their Places at exorbitant Prices: Mr. *Rogers*, *Auguſt* 1721. for 6,000 *l.* and Mr. *Hiccocks*, *June* 1723. for 7,500 *l.* and which very Sums now remain a Debt to the Suitors of the reſpective Offices. Your Lordſhips have already heard what was demanded and paid on thoſe Reſignations.

The Earl is pleaſed to ſay, " That on Mr. *Ed-* " *wards*'s ſecond Petition with Mr. *Hiccock*'s Re- " port annexed (in which Mr. *Edwards* ex- " preſly prayed, that he might be ordered to " accept the ſaid Compoſition) the Earl in a " proper and uſual Manner ordered the ſame as " prayed, and was informed, and believes, that " the ſaid Compoſition was made and agreed to " on a Conſultation of all or moſt of the Ma- " ſters of the ſaid Court.

I have heard, my Lords, the proper and uſual Manner is to have Petitions of this Nature ſet down to be heard in Publick, and the Parties concerned

concerned to be ſummoned; Petitions relating to Bankrupts, to Lunaticks, to Ideots, I believe are ſo: The Statute in the Caſe of Bankrupts directs publick Notice to be given in the *Gazette*, for the Creditors to meet; they have an Opportunity there to make all proper Enquiries, and ſee every thing done that may be moſt for their Advantage; the Bankrupt is not entitled to his Liberty, nor any Benefit allowed him, without a Certificate that he has made a full Diſcovery of his Effects, and that there appears no Reaſon to doubt of the Truth of ſuch Diſcovery; and not then neither, unleſs four Parts in five in Number and Value of his Creditors ſign ſuch Certificate, and teſtify their Conſent. How the Earl could think it juſt that the Suitors of the Court of Chancery (whoſe Money was forced from them by the Power of that Court, and put into the Hands of a Bankrupt Maſter) ſhould have leſs Care taken of them, leſs Privileges allowed them for their Security, than any other Creditors in the Kingdom, I can no way comprehend, but muſt think, my Lords, this clandeſtine and unuſual Proceeding a ſtrong Proof of the Crime charged in theſe Articles.

" As to what the Earl ſays of the Compoſiti-
" on being agreed to by moſt of the Maſters; if that, my Lords, had been ſo (though we ſhall give Evidence to the contrary) I ſhould not at all have wondered at it; for any Compoſition obſtructed the Inquiry and Proceedings, which otherwiſe muſt neceſſarily have been publick: But, my Lords, had the Compoſition been agreed to on a Conſultation of all or moſt of the Suitors concerned, that indeed would have been a good Defence of the noble Lord.

" He is pleaſed to ſay, at the Time of *Wil-*
" *ſon*'s Aſſignment of *Poulter*'s Debt, that *Poul-*
" *ter* was looked on to be a ſubſtantial Perſon.

We ſhall produce to your Lordſhips Evidence to the contrary: And I muſt obſerve, that the Earl does not offer to ſhew any proper Inquiry was made touching his Solvency. Sure, my Lords, when that Debt was taken as a Payment for the Suitors of the Court, his Circumſtances ſhould have been carefully looked to, and a Recognizance with Securities taken in Court; but that could not be done without a publick Notice of the Deficiency.

When I conſider, my Lords, the long Experience and great Abilities of the noble Earl, I can never think the Remiſneſs in this Inquiry, theſe clandeſtine and unuſual Proceedings, this precarious and trifling Compoſition, could ever have happened through Inadvertency only: I therefore, my Lords, muſt inſiſt upon it as a manifeſt Proof of the Charge contained in theſe Articles.

The Gentleman, who ſpeaks after me on this Occaſion, will open the Evidence we ſhall offer, and I will therefore take up no more of your Lordſhips Time.

Mr. Hedges. My Lords, it falls to my Share to endeavour to be Aſſiſtant to the Gentleman who ſpoke laſt, in maintaining the 13th and 14th *Articles*; which I ſhall do, by ſtating the Evidence to your Lordſhips, as ſhortly as I can.

My Lords, The 13th *Article* ſets forth, that Mr. *Dormer* having *embezled* great Part of the Suitors Effects, to the amount of 25,000 *l.* or ſome other great Sum, and he thereupon *abſconding*, Application was made to the Earl of *Macclesfield*, then Lord Chancellor, to *ſecure his Perſon and Effects*, which his Lordſhip *neglected* and *declined* to do; and *endeavour'd* to *conceal* the true State of the Office, as well with reſpect to Mr. *Dormer*'s Effects, as to the Debt due from him to the Suitors. And upon Motion made in the Court of Chancery (after his Lordſhip *knew* that Mr. *Dormer* had *abſconded*) that the Effects of ſome of the Suitors might be *transferr'd* to a more *ſecure* Office, his Lordſhip, in order to *delude* the Suitors into a Belief of the Safety of their Effects, and to prevent a publick Inquiry, then ſitting in open Court, did ſay, That the Parties need not be in haſte; *falſely and deceitfully* at the ſame Time declaring, that Mr. *Dormer* was only gone to *take the Air in the Country*, and that he would return in a little Time, and *all would be well*, or to that Effect. And, my Lords, notwithſtanding the Earl's Endeavour in his Anſwer to *evade* the Charge contain'd in this Article, I am perſuaded, upon hearing the Evidence, your Lordſhips will reſt ſatisfy'd, that it has been *made out* in every Particular. For, my Lords, as to the firſt Part of the Charge, where he denies that he was ever *advis'd to ſecure* Mr. *Dormer*'s Perſon, it will be made appear to your Lordſhips, that Mr. *John Bennet*, and Mr. *Lightboun*, went from a Meeting of ſeveral of the Maſters, and in their Names *acquainted* the Lord Chancellor, that it was their Opinion, that Mr. *Dormer* had *not fairly* ſtated his Accounts; that there was a *Deficiency* of upwards of 20,000 *l.* and that it was neceſſary for Example ſake, he ſhould be committed, according to the *Precedent* ſet him by the Lord *Cowper* in Dr. *Eddisbury*'s Caſe. But the Earl inſiſting on Mr. *Dormer*'s *Liberty*, they again repeated the *neceſſity* of making ſuch an Example, but at laſt left the Earl *fixed* in his Reſolution of continuing Mr. *Dormer* at Liberty.

My Lords, this Promiſe of Freedom to Mr. *Dormer* was only conditional; IF he gave in a fair and juſt Account, and aſſiſted in getting in the Debts. But he was ſo *far* from complying with theſe Conditions, that when he gave an Account in Writing of the Ballance of his Caſh, amounting to 49,000 *l.* he only inform'd them, that 24,000 *l.* of it was due from one *Wilſon* a Banker, *ſince broke*; but as to the Remainder, the Maſter, to whom it was given, could never obtain from him any other Notice where it lay, or what was become of it.

Immediately upon this, the Maſters were *ſummon'd*, and *acquainted* with it; and the next morning that Account was *left* with Mr. *Cottingham* for the Lord *Chancellor's peruſal.*

Your Lorſhips will be farther inform'd, that Mr. *Rogers* and Mr. *Hiccocks*, being directed by the Lord *Chancellor* to procure a Conveyance of Mr. *Dormer*'s Eſtate to them, for the Benefit of the Suitors, it was with the *greateſt Difficulty* that Mr. *Dormer* was *prevailed* upon to *comply* with it.

In the next place, my Lords, his Lordſhip, in his Anſwer, denies, that he endeavour'd to *conceal* the true State of the Office from the Suitors; or that he *remembers* any thing concern-

ing

ing the *Expreſſion* he is charg'd with; That Mr *Dormer* was only gone into the Country *to take the Air*, and that he wou'd *return* in a little time, and all would be well.

My Lords, I muſt agree, that, ſince his Lordſhip is reſolv'd to *deny* that he endeavour'd to *conceal* the State of the Office, it were to be *wiſh'd by him* that he cou'd *ſafely deny* this Expreſſion, ſince if true, it *proves* that Endeavour directly upon him. But, my Lords, the Words *were* ſpoken by his Lordſhip in open Court, and can be *ſworn to* by a Perſon, whoſe *Buſineſs* in Court at that time was ſuch, as can poſſibly leave no room for a *Doubt*, or *a Miſtake*.

For farther proof, my Lords, of his Lordſhip's Endeavour to *conceal* the State of this Office, we ſhall ſhew, that a Meſſage was ſent from the Lord *Chancellor* to Mr. *Lightboun* with a Propoſal that he ſhou'd advance 500*l.* towards this Deficiency: Acquainting him, at the ſame time, that it was for the *Honour of the Court*; and that the *Appearance* of a Deficiency wou'd be attended with *ill Conſequences*. But Mr. *Lightboun refus'd* to comply with that Demand, which he thought wou'd only *skin* over the Wound, and not effectually *cure it*. And yet, my Lords, this Propoſal, which Mr. *Lightboun* had the *Honeſty and Courage to reject*, was enforc'd by the impeach'd Earl with the *Threats of a Parliamentary Enquiry*; aſſerting, that if the Maſters did not contribute towards the *Concealment* of this Deficiency, it wou'd *occaſion* a publick *Enquiry*; wherein, if it ſhou'd appear, that they had *bought* their Places *contrary to the Statute 5 and 6 of Edward 6.* it might go ill with him, but that it wou'd fare much worſe with them; turning even that *Parliamentary Enquiry*, which he ought to have *dreaded* as his *ſure Puniſhment*, into means for *extorting* of Money. We have alſo Proofs that at another Meeting of the Maſters, a farther *Demand* was made upon them, in order to *conceal* the State of that Office; but all the Maſters then *refuſing* to contribute to a *Concealment* ſo *unreaſonable* in its own nature, the Lord *Chancellor paid* that Demand of 1000*l.* *himſelf*; not out of any *juſt regard* to the Suitors, but for his own *Profit and Advantage*, well knowing, that the Notoriety of this Inſolvency, wou'd make the Maſters Places *leſs valuable*; and therefore was content to part with this Sum, to *inſure* to himſelf a greater proſpect of Gain at his next Sale. Nor was it neceſſary for thoſe, who dealt at this *Auction*, to bring any Money of their *own* to it; the mere admittance into the Office immediately giving them *Poſſeſſion* of a Caſh ſufficient to anſwer his Lordſhip's Expectations. And thus *Beggars* were his *beſt Purchaſers*; though ſure to be the worſt *Truſtees* for the *Publick*.

How great a Hardſhip muſt it be, my Lords, to the Suitors of that High Court, to be contending many Years for their *juſt Property*, at an Expence poſſibly no ways *proportionable* to their remaining Fortunes; and to find at laſt, when they had *obtain'd* a Decree in their *Favour*, that their Money was *loſt in a Bankrupt* Office, without *hopes* of recovery? This is a Conſideration in which every Man in *Great Britain* is more or leſs concern'd. For what Eſtate is there, which may not ſome way or other in the Courſe of a few years, come under the *Direction* of that Court? How much then does it concern every *Individual*, and even the *Legiſlature* itſelf, that all its *Avenues* of Juſtice ſhou'd be *ſafe* and *open*? But how much more does it concern the *Honour* and *Conſcience* of the Perſon, who *preſides* in it, if there ſhou'd be a *dangerous Precipice* in the way, to be the *firſt* in ſetting up a *Mark* for all the World to *avoid* it?

But, my Lords, if in this Article, which I have open'd to your Lordſhips, there appears a *Criminal Endeavour* to conceal the Deficiency of this Office, ſupported by a *falſe Aſſertion* made in open Court, in order to delude the Suitors into an Opinion that their Money was ſafe, and a *great neglect* in not ſecuring Mr. *Dormer*'s Perſon; in the 14th Article, he will appear in a yet *more* guilty Light, not only *neglecting*, as in the former, to *enquire* into his Effects, but on *Enquiry made*, and *Time had* for mature deliberation, confirming a *precarious* and *trifling* Compoſition, and tying down the Suitors of the Court by his Authority, to the certain *Diminution* of one *half* at leaſt of their Effects, and in all probability to the irrecoverable loſs of the whole.

My Lords, in the Anſwer which his Lordſhip returns to this Article, he denies *none* of the Matters of Fact contain'd in it, but *admits* them as they there ſtand charg'd. I ſhall therefore only make ſome Obſervations on the nature of this Tranſaction, and on the Aſſertions in his Lordſhip's Anſwer.

In the firſt place, my Lords, he inſinuates that Mr. *Edwards* us'd *great endeavours* to obtain payment from *Wilſon*, but found them fruitleſs; *Wilſon* having ſtopp'd payment long before.

My Lords, I know not what *endeavours* his Lordſhip can prove Mr. *Edwards* to have us'd; but whatever they were, they were not unlikely to prove *fruitleſs*, ſince as his Lordſhip adds immediately, *Wilſon* had *long before ſtopp'd* payment: But this we can *prove*, That *Wilſon*'s Books were never *inſpected* by Mr. *Edwards*; that he never *knew* what his Debts were; nor any thing more of him, than that *Wilſon* came *voluntarily* to Mr. *Edwards*, and propos'd of himſelf to pay him 1400*l.* in ready Money, and to aſſign over to him a Debt of 10,000*l.* due from one *Poulter*, whoſe Circumſtances were ſtill more *precarious* than his own.

In the next Place, his Lordſhip aſſerts, that he order'd this whole Affair of *Wilſon*'s Compoſition in the *uſual* manner; and is inform'd, and believes, that this Compoſition was made and agreed to, upon a *Conſultation* of all, or moſt of the Maſters. But, my Lords, we ſhall make it appear, that the *Delivery* of the Petitions, the *Orders* made upon them, and the *whole Tranſaction* of this Affair, was carried on from *firſt to laſt* in a *clandeſtine*, *private*, and unuſual Manner.

As to the Conſent which his Lordſhip ſays he *believes* the other Maſters gave to this Compoſition, we ſhall *prove*, my Lords, that Mr. *Edwards* was the only Perſon concerned on behalf of the Suitors, and ſo *far* was he or any of the reſt of the Maſters from taking the *beſt Care* they could, that the *firſt* Draught of a Compoſition, which *Wilſon* brought, was accepted and ſettled between him

him, and Mr. *Hiccocks*. And that when Mr. *Edwards did* mention this Compoſition to *ſome* of the Maſters, they were ſo *far* from approving of it, that Mr. *Edwards acquainted* the Lord Chancellor, that it was the Opinion of one of them, that a *better Compoſition* was to be had. And another of the Maſters was ſo far from agreeing to this Method at all, that he propos'd a *Commiſſion of Bankrupcy* as the *only* Means to bring this Matter to a *proper Light*.

But that *Light*, my Lords, was what his Lordſhip was moſt *afraid* of. That wou'd have *diſcover'd* the *deficiency* of this Office, which would have brought a *diſrepute* upon others, and conſequently have *lower'd* their *Price*. This was his Lordſhip's *only* Care; whilſt for the reſt he cou'd ſet *unconcern'd*, and ſee ſo great a Sum of the Suitors Money *waſting away to nothing*, as it paſs'd thro' the Hands ſucceſſively of three Bankrupts.

But, my Lords, we ſhall farther prove, that when his Lordſhip order'd a Petition to be prefer'd to himſelf, that he might *approve* of this Compoſition, he never order'd the *Suitors* to be acquainted with it, nor had they *any Notice* of it. Nor did his Lordſhip *ask*, if *Wilſon* had *compounded* with any other Creditors, nor ſo much as *enquire* if he had *ſworn* to his Circumſtances.

It will be made appear, that at this very time Mr. *Edwards* was inform'd, and *did believe* that *Poulter*'s Circumſtances were *very bad*, and that neither he nor any one elſe *attended* the Commiſſion of Bankrupcy againſt *Poulter* on Behalf of the Suitors.

And, my Lords, to judge a little farther of this Matter, by a very ſure Rule of Juſtice; that, of *doing as one wou'd be done by:* Your Lordſhips will find that Mr. *Edwards confeſſes*, that if it had been his *own* Money, he wou'd have lookt more *carefully* after it.

Farther yet, my Lords, we ſhall prove, that notwithſtanding this Debt was *compounded* with *Wilſon*, yet he has paid the *whole Amount* of other Debts, with Intereſt, to *ſeveral* of his Creditors.

Laſtly, my Lords, his Lordſhip in his Anſwer ſays, that he *believes* Mr. *Edwards* has ſince got in one thouſand Pounds of *Poulter*'s Debt. The Truth is, one thouſand Pounds has been recover'd; but it was by an *accidental Diſcovery* of *conceal'd* Effects belonging to *Poulter*; one thouſand Pounds of *which* was paid to Mr. *Edwards* by *Wilſon*, as Part of *Poulter*'s Debt.

But does his Lordſhip *ſeriouſly* intend this for any *Vindication* of himſelf, or any *Compenſation* to the Suitors, that after *four or five years expectation*, inſtead of *twenty four thouſand Pounds due to them*, he *believes* one thouſand Pounds *may* have been ſince recover'd?

I cannot help obſerving here to your Lordſhips, how *different* a Care has appear'd throughout his Lordſhip's whole Behaviour, with Regard to his *private* Advantage, and the *Safety* and *Protection* of the Suitors of the Court.

In *their Caſe*, he could think it *equitable* to ſubject *their* Eſtates to the Loſſes of a *Maſter in Chancery*, who had *ſquander'd* and *gam'd* away their Subſtance and his own. But in his own *private* Affairs, how *cautiouſly circumſpect* was his Lordſhip? The leaſt Advantage was not neglected, and if a Maſter's Place was to be alienated, a *difference* of Guineas was meanly inſiſted upon, inſtead of the Pounds which had before been oppreſſively extorted.

But, my Lords, in this Impeachment, the Commons, with Regard to the Dignity of their own Proceedings, with Regard to this auguſt Judicature, are not deſirous to enlarge upon Matters of *ſmaller* Moment. His Lordſhip might have enjoy'd his *hundred Guineas* in quiet, had not a *long Series* of his Conduct in ſo high a Station, tended to *deſtroy* the Reverence due to the Laws, by an *Execution* of them inſtrumental to the Ruin of the Subject.———Againſt apparent Extortioners and Robbers, we guard ourſelves with a Caution proportionable to the Infamy of their Characters: But when the Sanctity of the Laws, and the Enſigns of Authority, deſign'd to defend and protect us, are made uſe of *to invite* us into Ruin, how ſure and extenſive muſt that Ruin be?

My Lords, The Commons *have* beheld with the deepeſt Concern ſuch corrupt Practices in this high Court; ſuch, as have *deform'd* the *Beauty* of Juſtice, and render'd the Adminiſtration of it *grievous*, and even *fatal* to the Subject. They have beheld that Miniſter of Juſtice, whom the Laws of the Land have inveſted with an *extraordinary* Power to puniſh *Frauds and Deceits*, himſelf carrying on a moſt *pernicious* Deceit, to the great *diſhonour* of the Court, and the *ruin* of its Suitors. The *Guardian* of Orphans become their *Oppreſſor*, the Keeper of the King's Conſcience proſtituting his *own*, and the Dignity of his high Station, to an ignominious *Traffick* with the beſt Bidder, and employing the SCALES OF JUSTICE in the Buſineſs of an *Uſurer*.

But, my Lords, that Parliamentary Enquiry is *now* come, with the *Terrors* of which he *forc'd* the Maſters into Compliance with his *arbitrary* Demands. He then *foretold* it might poſſibly GO ILL WITH HIM, tho' it wou'd fare worſe with them. So *juſt* a *Decree* pronounc'd by *himſelf* againſt *himſelf*, is, we truſt, in no Danger of being *revers'd*; but reſt aſſur'd, that as far as it regards him, it will be unanimouſly *confirm'd* by your Lordſhips.

Mr. *Lutwyche*. My Lords, we ſhall now proceed to our Evidence on theſe two Articles together: To ſhew to your Lordſhips that the Deficiency of *Dormer*'s Office was endeavour'd to be conceal'd by many indirect Practices; and firſt of all we ſhall call a Witneſs to prove Mr. *Dormer*'s Deficiency to be about twenty five thouſand Pouuds.

Mr. *Thompſon* called, and appeared.

Mr. *Lutwyche*. My Lords, we deſire that Mr. *Thompſon* may refreſh his Memory, as this Matter was referred to him to examine, and that he would pleaſe to give your Lordſhips an Account how he found the State of Mr. *Dormer*'s Office, and what Deficiency there was in it?

Mr. *Thompſon*. My Lords, I find in our Report the Debt due from Mr. *Dormer*'s Office was ſtated at 49604 *l.* 11 *s.* 11 *d.* and I find that Mr. *Edwards*, who ſucceeded Mr. *Dormer* in that Office, had paid to the Suitors 23725 *l.* 15 *s.* 9½ ſo that there remains due to the Suitors of the Court, ſuch as have paid their Money into Mr. *Dormer*'s Office, the Sum of 25878 *l.* 16 *s.* 1 *d.* ½ And this I believe to be a true State of the Account, from ſuch Evidence as was laid before us.

Mr. *Lutwyche*. If the Counſel on the other Side don't think fit to ask this Evidence any Queſtion, we beg Leave to call Mr. *Edwards*, who ſucceed-

ed Mr. *Dormer*, and will give your Lordſhips an account of the State of that Office, and what the Deficiency was.

Mr. *Henry Edwards* ſworn.

Mr. *Lutwyche*. My Lords, we deſire that Mr. *Edwards* may be asked, how much the Deficiency is in Mr. *Dormer*'s Office?

Mr. *Edwards*. My Lords, according to the Account given in, the Deficiency appears to be about twenty five thouſand odd hundred Pounds; but ſince that, there is diſcover'd about fifteen hundred Pounds more, which was not brought into the Account. It was diſcover'd about three Weeks or a Month ago, and not before.

Mr. *Lutwyche*. I deſire he may be ask'd whether he knows of any other Deficiency diſcover'd?

Mr. *Edwards*. No, my Lords, I do not.

Mr. *Serj. Probyn*. My Lords, I deſire Mr. *Edwards* may be asked, that as there hath been a further Deficiency diſcovered, whether there hath not alſo been a Diſcovery of further Effects?

Mr. *Edwards*. Not as I know of. I am informed Adminiſtration hath been lately taken out to Mr. *Dormer*, that there hath been a Diſcovery of Effects, but to what Value I can't tell.

Mr. *Strange*. I would deſire he may be ask'd, whether he hath had any Account from the Adminiſtrator?

Mr. *Edwards*. I have ſeen Mr. *Paxton*, who I underſtand adminiſtred. He told me he had diſcover'd ſome Effects, but he did not tell me to what Value.

Mr. *Lutwyche*. If the Counſel for the noble Earl have done, we would beg Leave to ask another Queſtion, in Relation to this Matter. They examine what were the other Effects of Mr. *Dormer*, we deſire to know, if Mr. *Edwards* can inform us, how long ago this Diſcovery was?

Mr. *Edwards*. I can't certainly tell. I believe it is about two Months ago that Mr. *Paxton* hath had Adminiſtration; and ſince that he hath made this Diſcovery.

Mr. *Lutwyche*. It is proper from this Queſtion that hath been ask'd by the Counſel for the noble Lord, to call another Witneſs to prove that there have been Effects diſcovered, and that there have been Goods laid by three or four Years, and almoſt ſpoil'd, becauſe no Care was taken of his Effects.

Mr. *Serj. Probyn*. My Lords, before this Gentleman goes, I beg Leave he may be asked one other Queſtion, whether he had not Notice before *Chriſtmas* laſt, that there were other Effects of Mr. *Dormer*, and from whom?

Mr. *Edwards*. Yes, I believe I had; and when I underſtood that Mr. *Paxton* was the Perſon who had taken out the Adminiſtration, I told him of it.

E. of Macclesfield. My Lords, I deſire he may be asked who it was that brought him Notice of theſe Effects?

Mr. *Edwards*. It was a Gentleman that came out of the Country. I don't remember his Name. He was a Perſon that lived near the Place where Mr. *Dormer*'s Country Houſe was. I have forgot his Name.

E. of Macclesfield. Can you recollect if you hear his Name? Was his Name *Goodfellow?*

Mr. *Edwards*. I believe it was.

E. of Macclesfield. I deſire, if you can recollect, who he ſaid he came from?

Mr. *Edwards*. I think he ſaid he came from Mr. *Cottingham*; I don't know that he mention'd your Lordſhip. I underſtood your Lordſhip had been acquainted with it, but not that he acquainted you of it.

Mr. *Campbel ſworn*.

Mr. *Lutwyche*. My Lords, I deſire that this Witneſs may be asked, whether he knows of any Goods or Effects of Mr. *Dormer* being diſcover'd, and at what Time, and how long they had lain in that Place where they were found?

Mr. *Campbel*. In the Year 1721, I did buy a Parcel of Hops, but who they belong'd to I did not then know; but ſince I find they were Mr. *Dormer*'s. They were one hundred and forty eight Bags of Hops. I ſold ſixteen of them the ſame Year, one hundred and one ſince. I bought them of Countrymen; ſome of one Man, and ſome of another. I bought them by Commiſſion, but Mr. *Dormer* was not the Man that employ'd me, neither did I receive the Money from his Hands.

Mr. *Lutwyche*. We deſire to know how long the Goods did lye in that Place where they were; and whether there was any Loſs by the Sale of thoſe Goods, being left ſo long there.

Mr. *Campbel*. They had lain there above three Years, and I believe, modeſtly ſpeaking, there was above five hundred Pounds Loſs upon them.

Mr. *Plummer*. I deſire Mr. *Campbel* may be asked how he came to know they were Mr. *Dormer*'s Hops?

Mr. *Campbel*. I never did know they were Mr. *Dormer*'s Hops, nor ſtill do I know it, but as I am told.

Mr. *Plummer*. My Lords, I deſire he may be asked who told him ſo?

Mr. *Campbel*. This Gentleman told me ſo [pointing to Mr. *Paxton*.]

Mr. *Serj. Pengelly*. My Lords, we ſhall now call Mr. *Paxton*, who hath taken out Adminiſtration by the Direction of the Lords Commiſſioners of the Great Seal; and under that Adminiſtration he hath poſſeſs'd himſelf of thoſe Effects, which were ſcatter'd and lay waſte before.

Mr. *Serj. Probyn*. My Lords, I beg Leave this Witneſs may be firſt asked one Queſtion. I think he hath ſaid that he bought thoſe Hops by Commiſſion, not by the Order of Mr. *Dormer*, nor for Mr. *Dormer:* I deſire he may be asked, by whoſe Direction they were kept ſo long by him?

Mr. *Campbel*. He that gave me the Orders to buy them was not Mr. *Dormer*, neither did he pay me the Money. The Reaſon they lay ſo long was, I had no Orders to ſell them.

Mr. *Serj. Prob*. Who was the Perſon that gave you Orders to buy them?

Mr. *Campbel*. The Perſon's Name is one Mr. *Longmead*.

Mr. *Serj. Prob*. Where doth this Perſon live?

Mr. *Campbel*. He lives at *Iſlington*.

Mr. *Com. Serj*. My Lords, I deſire this Witneſs may be asked, whether or no about the Time that theſe Hops were bought, they were not very cheap, and at a low Price?

Mr. *Campbel*. They were at a low Price.

Mr. *Com. Serj*. Whether a great Number of People have not kept Hops upon a Suppoſition that they would riſe?

Mr. *Campbel*. Yes they have, a great many.

Mr. *Serj. Probyn.* I desire he may be asked, whether he did not keep other Hops as well as these by him, for the Advantage of a better Market?

Mr. *Campbel.* Yes, I had several other Hops bought in that Year that I kept for a better Market, and still had a worse. I have Hops by me cost me 5 *l.* a Hundred, not worth now 10*s.* a Hundred.

E. of Macclesfield. How much a Bag might that be?

Mr. *Campbel.* I can't tell how many hundred may be in a Bag: I can't tell, because they are not weighed

E. of Macclesfield. Whereabouts?

Mr. *Campbel.* Sometimes there are three hundred, sometimes 2 and a half, sometimes 2 and 3qrs.

Mr. *Lutwyche.* My Lords, to explain this Matter I desire he may be asked, whether this Loss he speaks of, of 4 or 500 *l.* happened in the Difference of the Price, or by the Hops being spoiled?

Mr. *Campbel.* Both by the Difference of Price, Hops being cheaper, and by the Antiquity of the Hops.

Mr. *Lutwyche.* My Lords, we desire he may be asked who is this Mr. *Longmead?*

Mr. *Campbel.* He keeps a Shop in *Islington*, he keeps a Grocer's Shop.

Mr. *Lutwyche.* My Lords, I desire he may be asked, whether he is not Mr. *Dormer*'s Servant, or an Agent for him?

Mr. *Campbel.* For any thing I know he was an Agent for Mr. *Dormer.*

Mr. *Com. Serj.* My Lords, we desire he may be asked, whether for ought he knows he was not an Agent for Mr. *Dormer?*

Mr. *Campbel.* I believe he was an Agent for him, and I have good Reason to believe it, because he paid me all the Money, and gave me Orders to buy the Goods.

E. of Macclesfield. I desire to know whether the Witness infers that *Longmead* was Mr. *Dormer*'s Agent because he paid him Money; might not he have paid him the Money, tho' he had not been his Agent?

Ld. Ch. Jus. King. Speak your own Knowledge, whether he was Agent for Mr. *Dormer* or no.

Mr. *Campbel.* I never did ask him whose they were: He employed me, and I bought the Goods, and did suppose they were for Mr. *Dormer.* I never asked him whether they were his Goods or not.

Mr. *Sol. Gen.* My Lords, we desire that Mr. *Paxton* may be called, to shew how he discovered these Effects.

Mr. *Nicholas Paxton* Sworn.

Mr. *Lutwyche.* My Lords, we desire Mr. *Paxton* may give your Lordships an Account what he knows of these Hops.

Mr. *Paxton.* After I had got Letters of Administration to Mr. *Dormer* granted me, I did make what Inquiry I could relating to the Effects of Mr. *Dormer.* This Mr. *Longmead* came and told me of some Hops; that he was Servant to Mr. *Dormer*, and had bought them by his Direction. Then we went to Mr. *Campbel*'s who took out a Handful and said they were Saleable, and would bring in about 200 *l.* He told me they cost 800 *l.* and it would be best to dispose of them as fast as I could, that there might be no more Loss. They are not yet sold, they may be worth about 200 *l.*

Mr. *Lutwyche.* My Lords, It is admitted by the Answer, that Mr. *Dormer* absented himself and absconded. It was notorious, and talked of by every Body: It will lye upon this Noble Lord to give an Account what he did thereon. My Lords, we will now proceed to give your Lordships an Account of this Composition made with *Wilson* who was indebted to *Dormer.* This *Wilson* was a Banker, the Person that Mr. *Dormer* intrusted with Money; and upon that Occasion, there being a great Debt due to *Dormer*, as is set forth in the Articles, a Composition is made with *Wilson* on Account of that Debt. There were such Dealings and Proceedings therein, as will appear to your Lordships to have been unusual and unwarrantable. We beg Leave therefore to shew your Lordships a written Evidence, an Order under the Hand of this noble Lord himself for this Composition though never drawn up: And indeed your Lordships will observe that through the whole Course of these Proceedings, there is not any one Affidavit, or any one Order, or any Report filed in the usual Manner. From whence we may infer, that it was intended to be a clandestine thing, that nothing might appear of it upon Record, as other things do. The first thing we shall beg Leave to shew is, an Assignment from Mr. *Dormer* to one of the Masters in Chancery of this Debt. When we have shewn that Assignment, then we shall beg Leave to give your Lordships an Account of the Methods and Proceedings thereupon.

Mr. *William Green* sworn, and the Assignment produced.

Mr. *Lutwyche.* My Lords, we desire this Witness may be asked, whether he saw this Deed executed, and by whom?

Mr. *Green.* My Lords, I did see this Deed executed by the late Mr. *Dormer:* I am one of the Witnesses to it, and *John Jones* is the other Witness.

Mr. *Lutwyche.* My Lords, we desire this Deed may be read.

Clerk reads. This Indenture made the six and twentieth Day of *July*, *Ann. Dom.* 1721, and in the seventh Year of the Reign of our Sovereign Lord *George* by the Grace of God, King of *Great-Britain*, *France* and *Ireland*, Defender of the Faith, *&c.* Between *Fleetwood Dormer* of *Lincolns-Inn* in the County of *Middlesex*, *Esq*; late one of the Masters of the High Court of *Chancery* of the one Part, and *Henry Edwards* of *Lincolns-Inn* aforesaid, *Esq*; one of the Masters of the said High Court of *Chancery* of the other Part. Whereas *William Wilson* Citizen and Goldsmith of *London*, is and stands justly indebted unto the said *Fleetwood Dormer* upon Account, in the full and just Sum of twenty four thousand and forty six Pounds and four Shillings of lawful Money of *Great-Britain*, or upwards, as by the Books of the said *William Wilson* may and doth appear: And whereas the said *Fleetwood Dormer* is and stands justly indebted to divers Persons, Suitors in the said High Court of *Chancery*, in several considerable Sums of Money, for and on Accompt of Moneys brought before and paid to him as one of the Masters of the said Court: Now therefore for the more speedy getting in and recovering of the aforesaid Debt, due and owing by

and

and from the ſaid *William Wilſon* as aforeſaid; and alſo for the more ſpeedy and effectual Payment of all ſuch Sum and Sums of Money as are owing by the ſaid *Fleetwood Dormer* as aforeſaid: This Indenture witneſſeth, That for the Ends and Purpoſes aforeſaid, and for and in Conſideration of the Sum of ten Shillings of lawful Money of *Great-Britain* to the ſaid *Fleetwood Dormer* in Hand paid by the ſaid *Henry Edwards*, at or before the enſealing and delivery of theſe Preſents, the Receipt whereof is hereby acknowledged: He, the ſaid *Fleetwood Dormer*, hath granted, aſſigned, transferred, and ſet over, and by theſe Preſents, doth grant, aſſign, transfer, and ſet over unto the ſaid *Henry Edwards*, his Executors, Adminiſtrators, and Aſſigns, the ſaid Debt or Sum of twenty four thouſand and forty ſix Pounds and four Shillings, and all and every Part thereof, and all and every other Debt or Debts, Sum or Sums of Money any ways due or owing by or from the ſaid *William Wilſon* to the ſaid *Fleetwood Dormer* and every Part thereof, and all Intereſt due or to grow due for the ſame, and all Bonds, Bills, Notes, and other Securities, for the ſame or any Part thereof. And all the Right, Title, Intereſt, Property, Benefit, Advantage, Claim, and Demand whatſoever, both in Law and Equity, of him, the ſaid *Fleetwood Dormer*, of, in, to, or out of the ſame, and every or any Part thereof, to have, hold, receive, perceive, take, and enjoy the ſaid Debt or Sum of twenty four thouſand and forty ſix Pounds and four Shillings, and all ſuch other Debts and Sums of Money as are due or owing to the ſaid *Fleetwood Dormer* by the ſaid *William Wilſon* as aforeſaid, and every Part thereof, and all the Benefit thereof, and all and ſingular other the Premiſſes unto the ſaid *Henry Edwards*, his Executors, Adminiſtrators, and Aſſigns upon truſt. Nevertheleſs, and to the Intent and Purpoſe that he, the ſaid *Henry Edwards*, his Executors, Adminiſtrators, or Aſſigns, ſhall and do iſſue, pay, apply, and diſpoſe of the ſame, or ſuch Part or Parts thereof, as ſhall from time to Time be by him or them got in and received in ſuch manner as the ſaid High Court of *Chancery* ſhall in that Behalf order or direct, for and towards Payment and Satisfaction of ſuch Debts and Sums of Money as are now due and owing by the ſaid *Fleetwood Dormer*, for or on Account of Monies brought before and paid to him, as one of the Maſters of the ſaid Court. And in the mean time, after Receipt thereof, and until the ſame ſhall be ſo paid, applied, and diſpoſed of, ſhall and do depoſit, lend, or place out the ſame, or any Part thereof, in ſuch Manner as the ſaid Court of *Chancery* ſhall in that Behalf order or direct. And for the better enabling the ſaid *Henry Edwards*, his Executors, Adminiſtrators, and Aſſigns, to get, call in, and receive the aforeſaid Debt or Sum of twenty four thouſand and forty ſix Pounds and four Shillings, and other the ſaid hereby aſſigned Premiſſes upon the Truſts aforeſaid: He, the ſaid *Fleetwood Dormer*, hath made, ordained, conſtituted and appointed, and in his Place and Stead put and deputed, and by theſe Preſents doth make, ordain, conſtitute and appoint, and in his Place and Stead, put and depute the ſaid *Henry Edwards*, his Executors, Adminiſtrators, and Aſſigns, his true and lawful Attorney and Attornies irrevocable for him the ſaid *Fleetwood Dormer*, and in his Name; but upon the Truſts aforeſaid, to ask, demand, ſue for, recover, and receive of and from the ſaid *William Wilſon*, his Heirs, Executors, or Adminiſtrators, and all and every, or any other Perſon or Perſons whom it may concern, the aforeſaid Debt or Sum of twenty four thouſand and forty ſix Pounds and four Shillings, and other the ſaid hereby aſſigned Premiſſes, and every or any Part thereof upon the Truſts aforeſaid, and likewiſe to compound for the ſame, and every or any Part thereof, as he or they ſhall in their Diſcretions think fit, and upon non Payment of the ſame Debt or Sum, Debts or Sums, or any Part thereof, to bring, commence, and proſecute ſuch Action or Actions, Suit or Suits, either at Law or in Equity, or elſewhere, for the Recovery thereof, as he or they ſhall be adviſed, and on Payment thereof, or any Part thereof, to give Receipts and Diſcharges for the ſame, and one or more Attorney or Attornies for the Purpoſe aforeſaid, to make and conſtitute, and at Pleaſure to revoke, and generally to do and act in the Premiſſes for the recovering and obtaining of the ſaid Debt or Sum of twenty four thouſand and forty ſix Pounds and four Shillings, and other the ſaid hereby aſſigned Premiſſes, and every or any Part thereof, as fully and effectually to all Intents and Purpoſes as he the ſaid *Fleetwood Dormer*, his Executors or Adminiſtrators might have done; giving and hereby granting unto the ſaid *Henry Edwards*, his Executors, Adminiſtrators and Aſſigns, the full and whole Power and Authority of him the ſaid *Fleetwood Dormer*, in and about the Premiſſes upon the Truſts aforeſaid; hereby ratifying, confirming, and allowing all, and whatever the ſaid *Henry Edwards*, his Executors, Adminiſtrators, or Aſſigns, or his or their Attorney or Attornies ſhall lawfully do or cauſe to be done in or about the Premiſſes by Vertue of theſe Preſents. And the ſaid *Fleetwood Dormer* doth hereby for himſelf, his Heirs, Executors, and Adminiſtrators, covenant, promiſe, and agree to and with the ſaid *Henry Edwards*, his Executors, Adminiſtrators, and Aſſigns in Manner following: That is to ſay, that he, the ſaid *Fleetwood Dormer*, hath not received, compounded, releaſed or diſcharged, or conſented to the receiving, compounding, releaſing, or diſcharging the ſaid Debt or Sum of twenty four thouſand and forty ſix Pounds and four Shillings, and other the hereby aſſigned Premiſſes, or any Part thereof, and that he, his Executors, or Adminiſtrators ſhall not, nor will at any time hereafter, receive, compound, releaſe, or diſcharge the ſame or any Part thereof, without the Conſent of the ſaid *Henry Edwards*, his Executors, Adminiſtrators, or Aſſigns, firſt thereunto had and obtained in writing under his or their Hands. And further, That he the ſaid *Fleetwood Dormer*, his Executors and Adminiſtrators, ſhall and will at the Requeſts, Coſts and Charges of the ſaid *Henry Edwards*, his Executors, Adminiſtrators, or Aſſigns, make, do, and execute, or cauſe and procure to be made, done, and executed, any further or other lawful and reaſonable Acts, Deeds, Powers and Authorities, for the better enabling him, the ſaid *Henry Edwards*, his Executors, Adminiſtrators, and Aſſigns, to ſue for, recover, and obtain the ſaid Debt and Premiſſes hereby aſſigned, and every or any Part thereof upon the Truſt aforeſaid. And it is hereby declared and agreed that the ſaid *Henry Edwards*, his Executors, Adminiſtrators, or Aſſigns ſhall not be charged or chargeable with, or accountable for any more Monies than he or they ſhall actually receive, or ſhall come to his or their Hands by Vertue of theſe Preſents; and that it ſhall and may be

lawful to and for the ſaid *Henry Edwards*, his Executors, Adminiſtrators and Aſſigns, in the firſt Place, by and out of the Premiſſes, to deduct and reimburſe him and themſelves all ſuch Loſſes, Coſts, Charges and Expences as he, they, or any of them ſhall ſuſtain or be put unto, by Reaſon of the Truſt hereby in him repoſed, or the Management or Execution thereof, or any other thing in any wiſe relating thereunto: In witneſs whereof, the ſaid Parties to theſe Preſents have hereunto interchangably ſet their Hands and Seals the Day and Year firſt above written.

Fleetwood Dormer.

Mr. *Lutwyche*. The next thing we ſhall trouble your Lordſhips with in relation to this Matter of the Compoſition, is a Petition of Mr. *Edwards*, to which there is an Anſwer. The Anſwer is writ by Mr. *Cottingham*, and ſigned by the noble Lord. I mentioned to your Lordſhips that no Order is drawn up upon it: Nothing appears in publick: Therefore we muſt beg Leave to prove the Earl's Hand to this Order made upon this Petition.

E. of Macclesfield. After taking the Petition in his Hand and looking upon the Name ſubſcribed to the Anſwer written upon it, ſaid, My Lords, this is my Hand.

Clerk reads,

To the Right Honourable Thomas *Earl of* Macclesfield, *Lord High Chancellor of* Great-Britain.

The humble Petition and Repreſentation of Henry Edwards, *Eſq; one of the Maſters of the high and honourable Court of* Chancery.

Sheweth,

THAT *William Wilſon*, Citizen and Goldſmith of *London*, is and ſtands juſtly indebted to *Fleetwood Dormer*, Eſq; late one of the Maſters of this Court upon Account, in the full Sum of twenty four thouſand and forty ſix Pounds, four Shillings, as by the Books of the ſaid *William Wilſon* doth and may appear.

That the ſaid *Fleetwood Dormer* is and ſtands juſtly indebted to divers Perſons, Suitors in this Court, in ſeveral conſiderable Sums of Money. And for the more ſpeedy getting in and recovering the ſaid Debt, and effectual Payment of all ſuch Sum and Sums of Money as are owing by the ſaid *Fleetwood Dormer* as aforeſaid, the ſaid *Fleetwood Dormer*, for that End and Purpoſe, hath by Indenture bearing Date the 26th of *July* 1721, granted, aſſigned, transferred, and ſet over to your Petitioner, his Executors, Adminiſtrators, and Aſſigns, the ſaid Debt or Sum of twenty four thouſand and forty ſix Pounds four Shillings in Truſt, and to the Intent that your Petitioner ſhall pay, apply, and diſpoſe of the ſame, or ſuch Part thereof as ſhall from time to time be by him got in and received of and from the ſaid *William Wilſon*, in ſuch Manner as this Court ſhall order and direct.

That it appears to your Petitioner, that the ſaid *William Wilſon* is indebted to divers other Perſons in great Sums of Money, and for ſome time hath not been able to carry on his Buſineſs, or able to make good and pay the ſaid Debt ſo aſſigned to your Petitioner; but hath lately offered to your Petitioner and his other Creditors to come to a Compoſition, and to pay them in Proportion the utmoſt he is able. And your Petitioner doubting whether he can with Safety to himſelf, agree to any ſuch Compoſition,

Humbly prays your Lordſhip would be pleaſed to refer it to one of the Maſters of this Court, to ſee if ſuch Compoſition ſo propoſed by the ſaid *Wilſon* be for the Benefit of the Perſons intituled to receive the ſame.

And your Petitioner ſhall ever pray, *&c.*

30th of *June* 1722.

Be it as is prayed, and to that End let it be referred to Mr. Hiccocks *one of the Maſters of this Court, and let the Maſter ſpeed his Report: After which, ſuch further Order will be made as ſhall be juſt; of which give Notice forthwith.*

Macclesfield C.

Mr. *Lutwyche*. My Lords, I beg Leave to take Notice, that in this Petition it is expreſly recited, that *Dormer* was indebted to the Suitors of the Court, and that being ſo, we apprehend the greateſt Care ſhould have been taken for their Benefit. Your Lordſhips ſhall ſee in the Progreſs of this thing, how it was tranſacted. I believe any Perſon that is concerned in the Court of *Chancery*, hath not known ſuch a Proceeding in the moſt trifling Matter whatſoever. My Lords, the next thing is a ſecond Petition, ſaid to be with a Report annexed, but we can't find it filed; here is a Paper of Mr. *Hiccocks* not ſtampt nor filed, which we do apprehend to be the Report meant, and therefore we deſire that may be firſt read.

Clerk reads 26th of *July* 1722.

WHereas by an Order made by the Right Honourable the Lord High Chancellor of *Great Britain*, the thirtieth of *June* laſt, upon the humble Petition of *Henry Edwards*, Eſq; one of the Maſters of this Court, I am directed to ſee if the Compoſition in the ſaid Order mention'd, to be offer'd or propos'd to be made by *William Wilſon*, Citizen and Goldſmith of *London*, to the ſaid Mr. *Edwards*, as Aſſignee of *Fleetwood Dormer*, Eſq; late one of the Maſters of this Court, who was a Creditor of the ſaid *William Wilſon*, for the Sum of 24046 *l.* 4 *s.* 0 *d.* in the ſaid Petition mention'd: I have been attended by the ſaid Mr. *Edwards*, and by the ſaid *William Wilſon*, and conſidered of the ſeveral Matters by the ſaid Petition and Order to me referred. And the ſaid *William Wilſon* hath un-

der his Hand in Writing propos'd to aſſign over to the ſaid Mr. *Edwards* (as a Compoſition for, and in full Diſcharge of the ſaid Sum of 24046*l.* 4*s.* 0*d.*) the Sum of 10000*l.* part of a larger Sum due to the ſaid *William Wilſon*, from *Edward Poulter* of *Hackney*, in the County of *Middleſex*, Gent. and to pay to the ſaid Mr. *Edwards* in Specie the Sum of 1463*l.* 2*s.* 1*d.* over and above the Sum of 560*l.* already paid to the ſaid Mr. *Dormer* in part of the ſaid Compoſition. And upon Conſideration had of the Circumſtances of the ſaid *William Wilſon*, and the ſaid ſeveral Matters, I am of Opinion that the accepting the ſaid Compoſition will be for the Benefit of the Perſon or Perſons entitled to receive the ſame. All which I humbly certify and ſubmit to his Lordſhip.

Hiccocks.

Mr. *Lutwyche.* Now read the Petition of Mr. *Edwards*, and the Order thereupon.

Clerk reads.

To the Right Honourable Thomas *Earl of* Macclesfield, *Lord High Chancellor of* Great Britain.

The humble Petition of Henry Edwards, *Eſq*; *one of the Maſters of the high and honourable Court of Chancery.*

Sheweth,

THAT upon your Petitioner's former Petition prefer'd to your Lordſhip relating to *William Wilſon, Citizen and Goldſmith of* London, your Lordſhip *the* 30th *of June laſt was pleas'd to refer it to Mr. Hiccocks*, one of the Maſters of this Court, *to ſee if the Compoſition mention'd in the* ſaid Petition and *Order to be propoſed by the ſaid Wilſon*, would be for the Benefit of the Perſons entitled to receive the ſame.

That the ſaid Mr. *Hiccocks* having been attended by your Petitioner, and *the ſaid Wilſon hath purſuant* to your Lordſhip's ſaid Order, made his Report dated *the* 26th *of July laſt*, whereby he certifies that he is of Opinion that the accepting of the Compoſition in his Report mention'd, will be for the Benefit of the Perſon or Perſons entitled to receive the ſame, as by the Report annexed.

Wherefore your Petitioner moſt humbly prays your Lordſhip to take into your Conſideration the Matter of the ſaid Report, and to order your Petitioner to accept of the ſaid Compoſition upon the Terms therein mention'd, if your Lordſhip ſhall ſo think fit, or to make ſuch other and further Order in the Premiſſes, as to your Lordſhip ſhall ſeem moſt meet.

And your Petitioner ſhall ever pray, *&c.*

3d of *Auguſt*, 1722.

On the Report annexed be it as is prayed. Of which give Notice forthwith,

Macclesfield, C.

Mr. *Lutwyche.* My Lords, I muſt beg Leave to make one Obſervation upon this, that the noble Lord may explain it, for I believe there is no Precedent for it; when there is a Compoſition thus to be made, and thus referred, and a Report hath been made, The Prayer of the Petition is, that Mr. *Edwards* may be order'd to accept of this Compoſition, or to make ſuch other Order, as his Lordſhip ſhould think fit. The Anſwer to it is, Be it as is prayed, of which give Notice forthwith; by which I ſuppoſe the Parties underſtood that it was ordering Mr. *Edwards* to accept of this Compoſition. Now it is wonderful to me, if he was order'd to accept of the Compoſition, why it is ſaid, give Notice forthwith? What? when the thing is done? Beſides, there is another thing more material, to whom ſhould ſuch Notice be given? ſurely to the Suitors of the Court. But it is well known his Lordſhip had not appointed any Sollicitor for the Suitors of the Court, and they had no Notice, tho' here is a Semblance or Shew of what is done in other Caſes. We ſhall beg Leave to ſhew next to your Lordſhips, that theſe Orders on theſe Petitions, this Report, and theſe Proceedings, were not one of them entred or filed as Orders uſually are.

Mr. *Plummer.* My Lords, I beg Leave to make one Obſervation before this Matter goes over. The Petition is by Mr. *Edwards* only, one of the Maſters, and it is that my Lord *Macclesfield* would be pleas'd to order him to accept of the Compoſition. None of the Suitors of the Court, who were the Perſons entitled to receive the ſame, are Petitioners.

Clerk reads two Certificates from, and ſigned by *Edward Goldsbrough*, Deputy Regiſter, that there were no ſuch Orders entred, nor no ſuch Report filed.

Mr. *Lutwyche.* My Lords, the Compoſition is ſigned by *William Wilſon.* I deſire Mr. *Edwards* may be asked whether he knows Mr. *Wilſon*'s Hand?

Mr. *Edwards.* This is ſigned by Mr. *Wilſon*; it is Mr. *Wilſon*'s Hand.

Clerk reads,

WHereas a Suit in Chancery is now depending between Mr. *Edward Poulter* of *Hackney*, and myſelf, for the Sum of 22060*l.* 12*s.* 5*d.* which he agreed to pay me for and upon cloſing all Accounts between us: And whereas *Fleetwood Dormer*, Eſq; late a Maſter in the high Court of Chancery, being indebted to divers Perſons, Suitors in the ſaid Court, in ſeveral conſiderable Sums of Money, for and on Account of Money brought before and paid to him as one of the Maſters of the ſaid Court, he the ſaid *Fleetwood Dormer*, for the better Payment thereof, did by Aſſignment dated the 26th of *July* 1721, aſſign over to *Henry Edwards*, Eſq; one of the Maſters of the ſaid Court, a Debt or Sum of 24046*l.* 4*s.* which was and is due and owing from me to him the ſaid *Fleetwood Dormer*: And whereas I being incapable of paying the ſaid Debt of 24046*l.* 4*s.* did lately propoſe as a Compoſition for and in full Diſcharge of the ſame, to aſſign to the ſaid *Henry Edwards* the Sum of 10000*l.* part of the Sum of 22060*l.* 12*s.* 5*d.* due to me from the ſaid *Edward Poulter*, as aforeſaid; and likewiſe to pay to him the ſaid *Henry Edwards*, the Sum of 1463*l.* 2*s.* 1*d.* in Specie, over and above the Sum of 560*l.* before paid to the ſaid Mr. *Dormer*, in part of the ſaid

ſaid Compoſition: And whereas on a Petition prefer'd to the Right Honourable the Lord High Chancellor of *Great Britain*, by the ſaid *Henry Edwards*, repreſenting the Matter of the ſaid Propoſal; and after ſeveral ſubſequent Proceedings had upon the ſaid Petition, his Lordſhip was pleaſed, by Order dated the third of *Auguſt*, 1722, to order the ſaid *Henry Edwards* to accept of the ſaid Compoſition: And the ſaid *Henry Edwards* having thereupon agreed to accept of the ſaid Compoſition, accordingly I do hereby, in Conſideration thereof, aſſign over to the ſaid *Henry Edwards* the Sum of ten thouſand Pounds, part of the Sum of twenty two thouſand and ſixty Pounds, twelve Shillings and five Pence, due to me from the ſaid *Edward Poulter* as aforeſaid, having already paid him the ſaid Mr. *Edwards*, the other Sum of 1463 *l.* 2*s.* 1 *d.* before-mention'd. And I do hereby promiſe to pay to the ſaid *Henry Edwards*, Eſq; or his Order, the ſaid Sum of ten thouſand Pounds, on my recovering the Sum of twenty two thouſand and ſixty Pounds, twelve Shillings and five Pence aforeſaid, or otherwiſe to pay him a like Proportion of what I ſhall recover, more or leſs, from the ſaid *Edward Poulter*. And I do hereby further promiſe, that I will not do any Act to incumber or diſcharge the Demand I now have againſt the ſaid *Edward Poulter*, without the Conſent of the ſaid *Henry Edwards*. And whereas the ſaid Mr. *Edwards* does now accept of the ſaid Compoſition, I do hereby declare and agree, that if I do not on Demand pay him the before-mention'd Proportion of what I ſhall recover from the ſaid *Edward Poulter* as aforeſaid, or do any ways diſcharge the Demand I now have againſt him, without the Conſent of the ſaid *Henry Edwards*, that then the ſaid Compoſition ſo made by the ſaid *Edwards*, ſhall be void, and of no effect, as if it had never been made. And I do hereby further promiſe, I will at my own Charge proſecute the ſaid Suit, and alſo do and execute all further and other Acts that ſhall be neceſſary for the better aſſigning to the ſaid *Henry Edwards*, Eſq; the before-mention'd Proportion of what I ſhall or may recover as aforeſaid, from him the ſaid *Edward Poulter*, as he the ſaid *Henry Edwards* ſhall at any Time require. Witneſs my Hand this twenty eighth Day of *Auguſt*, 1722.

William Wilſon.

31ſt of *October*, 1724. Paid to *Henry Edwards*, Eſq; the Sum of one thouſand Pounds, in part of this Note or Aſſignment.

William Wilſon.

Mr. *Lutwyche*. My Lords, this Compoſition which hath been read to your Lordſhips, is recited to be in full Satisfaction and Diſcharge of *Wilſon*'s Debt. Now we beg Leave Mr. *Edwards* may be asked, whether he made any Application to the Earl of *Macclesfield*, before the firſt Petition was preferr'd?

Mr. *Edwards*. My Lords, I had received Propoſals from Mr. *Wilſon*. He came to me and told me, he had a Sum of Money in his Hands, and was willing to pay the Debt to Mr. *Dormer*, in Proportion with his other Creditors, and asked me whether I would accept of a Compoſition, and give him a Diſcharge in full. I told him I had no Power to make a Compoſition, but however I would repreſent it to ſome of the Maſters; and accordingly I ſpoke to Mr. *Hiccocks*, who was then ſenior Maſter, and told him the Propoſal Mr. *Wilſon* had made; and I believe I mention'd it to others, but eſpecially to Mr. *Hiccocks*, he being the ſenior Maſter, and more particularly concerned in Mr. *Dormer*'s Affairs. Mr. *Hiccocks* was of Opinion I could not ſafely make a Compoſition. I asked, What Method then was the moſt proper to be taken? if that was really all he had to pay, I had better ſecure that than have nothing. He ſaid he did not ſee why it might not be in this Caſe as in other Caſes; whether upon a Petition to my Lord Chancellor, he might not direct an Enquiry to be made by a Maſter, whether it was for the Benefit of the Parties to make ſuch Compoſition or not. Upon that I waited on my Lord Chancellor, and acquainted him with Mr. *Wilſon*'s Propoſal. I told his Lordſhip, I thought I had not Power to do it. He ſaid, I think ſo too; I don't ſee that you have Power to do it. Said I, I am informed that it is uſual in Caſes of this Nature, to apply to the Court by Petition, that it may be referred to a Maſter, to ſee whether the accepting of this Compoſition be for the Benefit of the Parties concerned or not. Yes, ſays my Lord, I think that is very proper, that will indemnify you, I would have you prefer a Petition; which accordingly I did.

Mr. *Lutwyche*. I would beg Leave to ask in Relation to what he mentions, that it was taken Notice of that he had no Power to make ſuch Compoſition, whether any thing was ſaid whether my Lord *Macclesfield* had ſuch a Power?

Mr. *Edwards*. No, there was nothing ſaid of that.

Mr. *Plummer*. My Lords, I deſire he may be asked, whether any of the Suitors were acquainted with this intended Compoſition?

Mr. *Edwards*. No.

Mr. *Sol. General*. Did my Lord *Macclesfield* give any Direction to give Notice to any of the Suitors?

Mr. *Edwards*. No.

Mr. *Plummer*. My Lords, I deſire he may be asked if he himſelf attended Mr. *Hiccocks* when Mr. *Wilſon* was before Mr. *Hiccocks*?

Mr. *Edwards*. I am not ſure I was there at any time with Mr. *Wilſon*.

Mr. *Plummer*. If he knows what Methods were taken to know what Mr. *Wilſon* was worth?

Mr. *Edwards*. I underſtood that Mr. *Hiccocks* and Mr. *Rogers*, the two ſenior Maſters, upon Mr. *Dormer*'s abſenting himſelf, had Mr. *Dormer*'s Accompts laid before them, and that they were directed to inſpect thoſe Matters; and I was informed they did look into *Dormer*'s Books, and had alſo the Peruſal and Inſpection of Mr. *Wilſon*'s Books, to ſee how Mr. *Dormer*'s Affairs ſtood in thoſe Books.

Mr. *Plummer*. My Lords, I deſire Mr. *Edwards* may be asked if any Body was employ'd for the Suitors on their Behalf?

Mr.

Mr. *Edwards*. I was before Mr. *Hiccocks*, but not preſent with Mr. *Wilſon*.

Mr. *Plummer*. I ask if any Body on the Suitors Behalf was before Mr. *Hiccocks*, when Mr. *Wilſon* was there, to ſee and croſs-examine him?

Mr. *Edwards*. I don't remember there was.

Mr. *Serj. Pengelly*. My Lords, I deſire Mr. *Edwards* may be asked whether this Petition is of his own Hand-writing?

Mr. *Edwards*. No, my Lords.

Mr. *Serj. Pengelly*. Do you know whoſe it is?

Mr. *Edwards*. It is my Clerk's Hand.

Mr. *Serj. Pengelly*. Whether the two laſt Lines were ſtruck out before the Anſwer to the Petition, and by what Hand?

Mr. *Edwards*. I don't know when they were ſtruck out.

Mr. *Serj. Pengelly*. My Lords, we will beg Leave to mention what it is. At the End of the firſt Petition, the Maſter deſires an Indemnification by the Order of the Court: Part of the Petition is, that he may be indemnified and ſaved harmleſs in making ſuch Compoſition. But that is ſtruck out before the Anſwer, which ſhews, as I humbly apprehend, the very Notice that the Earl of *Macclesfield* himſelf took, how dangerous and hazardous that Tranſaction was.

Read the Words.

Clerk reads. And that your Petitioner may be indemnified and ſaved harmleſs in making ſuch Compoſition.

Mr. Serj. Pengelly. Do theſe Words ſtand now in the Reading?

Clerk. No, they are razed out.

Mr. Edwards. I remember this was a Paper that I laid before the honourable Committee. I was a little ſurprized to ſee thoſe Words ſtruck out; but when they were ſtruck out I can't ſay, nor by whom.

Mr. Lutwyche. I deſire he may be asked, if they were ſtruck out before he delivered the Petition into the Committee?

Mr. Edwards. Yes they were.

Mr. Sol. Gen. My Lords, we deſire he may be asked how much he hath received of this Compoſition?

Lord Lechmere. I deſire him to explain himſelf, whether theſe Words were ſtruck out after the Petition delivered, and before the Order made by the noble Earl?

Mr. Edwards. My Lords, I don't remember ever to have taken Notice, that thoſe Words were ſtruck out, till I had Occaſion to look for it to lay it before the Committee.

Lord Lechmere. Whether he hath any Doubt whether they were ſtruck out before they were delivered into the Committee?

Mr. Edwards. They were ſtruck out before I delivered them into the Committee.

Mr. Sol. Gen. In whoſe Cuſtody was this Petition?

Mr. Edwards. I believe part of the Time in Mr. *Hiccocks*'s; Mr. *Hiccocks* ſent it to me, and I have had it ever ſince.

Mr. Serj. Pengelly. Whether he ſtruck out theſe Words that were inſerted for his own Indemnification?

Mr. Edwards. No, upon my Oath I did not.

Earl of Abingdon. As I apprehend, there was no Commiſſion of Bankrupcy againſt *Wilſon*, therefore I would know what Method was taken to inform the Court of the real Subſtance and Ability of *Wilſon* before this Compoſition was made?

Mr. Edwards. I know of no other Application made to the Court by Mr. *Wilſon*.

Earl of Abingdon. Was *Wilſon* examined upon Oath?

Mr. Edwards. Mr. *Hiccocks* told me that Mr. *Wilſon* had made an Affidavit, that this Sum of Money which he propoſed as a Compoſition, was what he was able to pay in Proportion with the reſt of his Creditors, and that he grounded his Report thereupon.

Mr. Lutwyche. Was this Affidavit ever filed?

Mr. Edwards. No, my Lords.

Mr. Sol. Gen. My Lords, we deſire he may give an Account how much he hath received of this ten thouſand Pounds.

Mr. Edwards. The firſt Sum was fourteen hundred and odd Pounds, and the Sum of one thouſand Pounds ſince.

Mr. Sol. Gen. How much of this was of the ten thouſand Pounds?

Mr. Edwards. Only the one thouſand Pounds.

Mr. Sol. Gen. What is become of *Poulter*?

Mr. Edwards. *Wilſon* hath told me that he is in *Holland* or *France*.

Mr. Sol. Gen. What was his Character, as to Subſtance, at the Time of his Compoſition?

Mr. Edwards. I never met any Body that could give an Account of his Character. All I heard of him was from Mr. *Wilſon* himſelf.

Mr. Lutwyche. My Lords, I deſire he would acquaint your Lordſhips when the one thouſand Pounds was paid?

Mr. Edwards. I can't recollect exactly the Time.

Mr. Lutwyche. As near as you can, before or ſince *Chriſtmas*?

Mr. Edwards. I believe it was in *September* or *October* laſt; I believe in *October*.

Mr. Sol. Gen. I deſire Mr. *Edwards* may inform your Lordſhips what he thought of *Poulter*, at the Time of the Compoſition, whether he looked upon him as a Man of Subſtance?

Mr. Edwards. I could make no Judgment of the Man, I never ſaw him before; I know nothing of him, otherwiſe than as Mr. *Wilſon* told me.

Mr. Sol. Gen. That is no Anſwer to my Queſtion, which is what his Opinion was as to his Subſtance at the Time of the Compoſition, whether he would have truſted him with one hundred Pounds?

Mr. Edwards. I can't tell what Anſwer to give to it; *Wilſon* repreſented him to me as a Man able to pay the Debt; and from his Repreſentation I believed that *Poulter* was ſufficient.

Mr. Sol. Gen. Whether he enquired into *Poulter*'s Character?

Mr. Edwards. There was no Body I knew to enquire of.

Mr. Sol. Gen. Did he enquire, or did he not?

Mr. Edwards. I asked Mr. *Wilſon* as many Queſtions as I could, and what his Opinion was about him. He told me he believed he was able to pay his Debts, and he told me one *Helbut* a *Jew*, who

was his Bail, could tell his Substance. I happen'd to meet *Helbut* at the *Rainbow* Coffee-House, and I asked him if he knew *Poulter*. He said Yes. Says I, is he a Man of any Substance, What is he? No, says he, I believe he is in very mean Circumstances. This is all I ever asked.

Sol. Gen. What was your Opinion of this Man's Abilities?

Mr. Edwards. My Lords, I told you that as to the account I had of him, *Mr. Wilson* gave me a great assurance that he was a Man of Ability.

Mr. Plummer. I desire he may be ask'd, whether *Mr. Wilson* hath not paid his whole Debt to several other Creditors?

Mr. Edwards. I am inform'd he hath paid his full Debt to some Creditors.

Mr. Plummer. My Lords, I desire he may be ask'd, what Directions he received from my Lord *Macclesfield* to inquire into this Man's Circumstances?

Mr. *Edwards.* I had no Directions.

Mr. *Plummer.* Whether any Inquiry was made by the Earl of *Macclesfield?*

Mr. *Edwards.* Not as I know of.

Mr. *Lutwyche.* I think he mentioned one *Helbut* as his Bail: I desire to know whether there was a Suit commenced for this Debt assigned?

Mr. *Edwards.* I understood it was for this Debt assigned, which *Wilson* recovered at Law.

Mr. *Serj. Pengelly.* My Lords, I desire he may be asked, whether Mr. *Poulter* hath appeared here and been esteemed solvent, or a Person quite gone away?

Mr. *Edwards.* I have not seen Mr. *Poulter*, nor any that have seen him, for some considerable time.

Mr. *Serj. Pengelly.* My Lords, I beg Leave to make one Observation, and it is to save your Lordships time; that is, That you would be pleased to observe in the Proceedings upon this Article, the several Acts and Orders made by the Earl of *Macclesfield* relating to this Deficiency of *Dormer*'s, do take Notice of his Deficiency, and you'll find the Earl himself doing one Act which makes a Deficiency; that is, compounding a Debt due from *Wilson* to *Dormer*; and therefore those Orders having been read before your Lordships, you will please to retain them in your Memory, till we come to the 6th Article, wherein it is charged that there was a Deficiency in *Dormer*'s Office, and there we shall shew that this noble Lord declared that he never knew of any Deficiency; and by an Order made in Court, pronounced by himself, he then did direct that a Master should inquire if there was any Deficiency in this Office; so that those publick Acts won't be necessary to be read over again upon that Article, but as now produced, will be sufficient to prove the Notice the noble Earl had of this Deficiency, and that even he made part of the Deficiency himself.

Mr. *Lutwyche.* My Lords, we have done upon these two Articles we have opened.

Mr. *Serj. Probyn.* My Lords, if the Gentlemen have done, we desire to ask some Questions, and first we beg Leave that he may be askt, whether any of the Masters were acquainted with this Agreement or Composition with Mr. *Wilson?*

Mr. *Edwards.* I don't remember that any were, but Mr. *Hiccocks.*

Mr. *Serj. Probyn.* My Lords, we desire he may recollect whether there was any Consultation between him and any other Master, as to the Manner that this Composition should be made, before it was accepted, and whether it was a reasonable Composition or not?

Mr. *Edwards.* I mentioned it to two or three other Masters at the publick Office, but I can't charge my Memory particularly who they were.

Mr. *Serj. Probyn.* Was that before the time that the Composition was made?

Mr. *Edwards.* Before the time I applied to my Lord *Macclesfield.*

Mr. *Com. Serj.* My Lords, I desire that Mr. *Edwards* may inform your Lordships from whom it was that he received this Information, that several of the Creditors of *Wilson* were paid their full Debts?

Mr. *Edwards.* The first Person that informed me was Sir *Laurence Carter*; I happened to be at his Chambers, and naming to me the Affair of *Wilson*, he told me his Brother Mr. *Thomas Carter* had received 120*l.* which Mr. *Wilson* owed him, and which was his whole Sum.

Mr. *Com. Serj.* I desire to know when it was that he received that Sum?

Mr. Edwards. There was no time mentioned when that was paid him: As near as I can recollect the time, when Sir *Laurence Carter* told me this, it was soon after the Composition.

Mr. Com. Serj. My Lords, I desire he may recollect, whether this Payment was made before the Composition or after; did not he say it was before the Composition?

Mr. Edwards. No, I don't remember that.

Mr. Serj. Probyn. I desire he may be asked, whether he knows any thing of this Payment to *Mr. Carter* of his own Knowledge?

Mr. Edwards. No, I don't know it of my own Knowledge, but I believe it to be very true.

Mr. Serj. Probyn. Since he had this Information of one Debt being paid intirely, tho' he had compounded with others, I desire he may be ask'd whether he ever charg'd *Mr. Wilson* with it?

Mr. Edwards. Yes, my Lords, I did: A little after I went to *Mr. Wilson*, and I told him that I was informed he had paid *Mr. Thomas Carter* his full Demand, and it was rumoured about that he had paid several others their full Debts, and that it look'd unfair. Says he, this Money was lent me by my particular Friends, to pay off some little straggling Debts to keep me up in my Business, and therefore I was unwilling he should lose it.

Mr. Serj. Probyn. Whether did he apprehend this to be a new Debt contracted since his Failure, or an old one due before?

Mr. Edwards. I don't know when the Debt was contracted.

Mr. Com. Serj. I apprehend he ſays, that this Money was lent him by ſome Friends to ſet him up again?

Mr. Lutwyche. Really, my Lords, we would not interrupt the Gentlemen, but I take it, what they are going on with is not Evidence. We muſt ſubmit it, whether what *Mr. Wilſon* ſaid is Evidence, either on the one Side or on the other?

Mr. Com. Serj. We muſt humbly be in your Lordſhips Judgment, whether this kind of Evidence be not as proper on our Side as on the other? moſt of the Evidence *Mr. Edwards* has given to affect the noble Earl, has been only Informations he has had from *Wilſon* or Sir *Laurence Carter*, and yet now the learned Manager objects the ſame Information muſt not be admitted as Evidence on the other Side. I apprehend if any Favour is to be ſhewn on either Side, it ſhould rather go on in the Support of Innocence.

Lords. Go on, go on.

Mr. Sol. Gen. My Lords, we don't oppoſe their going on, we only beg Leave to ſet your Lordſhips right. We did not give a tittle of Evidence of what *Mr. Wilſon* ſaid: We have proved the Petitions, we have proved the Orders, we have proved the Facts; we did not mention a Word of Sir *Laurence Carter*, it ſprung from this Examination; but we are willing they may go on, if your Lordſhips think fit.

Earl of Macclesfield. My Lords, I apprehend there is no Occaſion to give your Lordſhips any trouble. If what this Gentleman hath ſaid, with relation to *Mr. Wilſon*'s Payment to his Creditors is no Evidence, it needs no Anſwer.

Mr. Com. Serj. My Lords, we deſire that *Mr. Edwards* may inform your Lordſhips, whether or no there was any Conſultation among the Maſters relating to this matter, and what their Opinion was?

Mr. Edwards. I don't know of any Conſultation about it.

Mr. Com. Serj. We deſire that he may inform your Lordſhips, whether he made any Acknowledgment for his being admitted into his Office, and to whom this Money was paid, and to what Purpoſe, and how applied?

Mr. Edwards. My Lords, the Steps I took to be admitted into my Office, if your Lordſhips will give me leave to trouble your Lordſhips with the Narrative, were theſe. Firſt, I applied to *Mr. Godfrey* one of the Maſters, with whom I had moſt Acquaintance: I told him I heard *Mr. Dormer*'s Office would be diſpoſed of; he told me he believed it would. Says I, if I could be accepted I have ſome Thoughts of treating for it, what is the uſual method in thoſe Caſes to be recommended to my Lord Chancellor? Says he, you muſt apply to my Lord's Secretary *Mr. Cottingham*; accordingly I did, and I told *Mr. Cottingham* that I had heard *Mr. Dormer*'s Office was to be diſpoſed of. *Mr. Cottingham* told me it was to be diſpoſed of. I then talk'd to him about the Terms. *Mr. Cottingham* told me as to the Price and the Perſon, my Lord *Macclesfield* had left it intirely to the other Maſters; for whatſoever that Place could fetch, was intended to go towards making up *Mr. Dormer*'s Deficiency. Upon that, my Lords, I went again to *Mr. Godfrey*, and after a Meeting or two, I concluded to give five thouſand Pounds if I could be admitted. Whether *Mr. Godfrey*, or *Mr. Cottingham*, or who went to my Lord I can't tell. I had not the Honour to ſee my Lord till I was admitted: But upon theſe Terms I was approved. I had Direction, I can't ſay whether *Mr. Godfrey* or *Mr. Cottingham* gave me the Directions, that I ſhould pay my Money into the Hands of *Mr. Rogers* the then ſenior Maſter; accordingly I did pay five thouſand Pounds, and in three or four Days after I had the Honour to be admitted and ſworn in.

Mr. Strange. My Lords, I deſire he may be asked, whether at the time of his Admiſſion any Preſents was made by him to the Earl of *Macclesfield* or to his Secretary?

Mr. Edwards. None at all, but the Secretary's Fees as uſual in thoſe Caſes.

Mr. Strange. Whether at the time he agreed to pay the Sum of five thouſand Pounds for the Office, he knew how the Money was to be apply'd?

Mr. Edwards. Yes, *Mr. Godfrey* told it me when I went back to him from *Mr. Cottingham*; I remember to have asked him ſeveral Queſtions, and made him ſeveral Propoſals relating to the Office, for we differed a great deal about its Value; I think I firſt propoſed three thouſand Pounds for it; but he diſliking that and ſome other Offers I made him, I deſired to know how much it was that my Lord *Macclesfield* inſiſted upon? to which he anſwered, that it was not my Lord's Intention to take any thing for the Admittance, but that he had left it to the Diſpoſal of the Maſters, to make the moſt of it for the Benefit of the Office.

Mr. Com. Serj. Whether he knows how this Money was diſpoſed of, and to what Uſe employed?

Mr. Edwards. I can't remember the time, but ſome ſhort time before *Mr. Rogers* ſurrendred his Office, he paid me back this five thouſand Pounds which I in a little time paid to the Suitors of the Court.

Mr. Strange. Whether before he ſurrendred his Office, he had any Diſcourſe with the Maſters how *Mr. Dormer*'s Debts were ſecured?

Mr. Edwards. No otherwiſe than upon this Treaty. I told *Mr. Cottingham*, I hear there is a Diſcourſe of a Deficiency in *Mr. Dormer*'s Office; ſays he, I believe there is, but how much I can't tell; but that can be no Objection to you, becauſe you are to anſwer for no more than you receive. Matters are all ſettled and taken Care of, that what Deficiency ſoever there is ſhall be made good.

Mr. Serj. Probyn. By whom?

Mr. Edwards. He did not ſay by whom, or in what Manner.

Mr. Serj. Probyn. Had you any Diſcourſe with any other Maſter?

Mr. Plummer. My Lords, I beg leave to make one Obſervation. The Counſel ſays with any other Maſter, and the Gentleman at the Bar ſays it was *Mr. Cottingham* told him ſo.

Mr. Serj. Probyn. This Gentleman I am examining

amining is one of the Maſters, therefore it is not improper to ask whether he had any Diſcourſe with any other of the Maſters?

Mr. Edwards. I made the ſame Objection to *Mr. Godfrey*, and he anſwered me much the ſame. *Mr. Godfrey* ſaid he could not tell what the Deficiency was, but whatſoever it was, that would be all ſettled and made good.

Mr. Serj. Probyn. As he had this Diſcourſe with *Mr. Godfrey*, I deſire he may be ask'd, whether he hath not likewiſe had ſome Diſcourſe with *Mr. Rogers* how this Deficiency was to be made good?

Mr. Edwards. No, I don't remember I had any Diſcourſe with *Mr. Rogers.*

Mr. Com. Serj. My Lords, I deſire he may inform your Lordſhips, whether at any other time he had any Diſcourſe with any of the Maſters about this matter?

Mr. Edwards. My Lords, I often talk'd upon this Subject with the Maſters, as a matter which very much concern'd my Office. This I mentioned at the time I came in. They were then all of Opinion that this Deficiency was to be made good. I don't remember that any Body told me in what method or particular way it was to be made good.

Mr. Com. Serj. I deſire he would inform your Lordſhips, as near as he can remember, whether it was ſaid that it would be made good, or that it was to be made good?

Mr. Edwards. I can't remember the diſtinct Words, I took it to have the ſame tendency and meaning.

Mr. Serj. Probyn. I deſire he may be ask'd, whether he hath not ſeveral times and on many Occaſions heard the Maſters declare, that this Deficiency was to be made good, and by the Maſters?

Mr. Edwards. I have heard them ſeveral times declare, that they did not doubt but it would be made good; but I never heard them ſay that it would be made good by the Maſters. I have often heard the Maſters ſay they would not make it good.

Mr. Serj. Probyn. I deſire he may be ask'd, whether about the time that the Maſters advanced the five hundred Pounds apiece, he did not hear them declare how this Deficiency of *Dormer* was to be made up?

Mr. Edwards. My Lords, when I came into the Office, I think the very Day that I was admitted, *Mr. Rogers* paid five hundred Pounds; eight more paid five hundred Pounds apiece, ſome at one time, ſome at another; they did not all pay at the ſame time. That I heard was to go towards making up this Deficiency; but how far the Maſters intended to contribute further I can't ſay.

Mr. Com. Serj. I deſire he may inform your Lordſhips, whether he did not apprehend that the making up of this Deficiency was a great Concern to him?

Mr. Edwards. Yes, I think it hath been of a great Concern to me.

Mr. Com. Serj. I deſire to know then how it comes to paſs that he inquired no more into it?

Mr. Edwards. My Lords, I remember I was once asking ſome Queſtions relating to that Account, and it was told me, that the State of this Deficiency had been laid before my Lord Chancellor before I was admitted. Upon that I did conclude, that this Contribution of the Maſters, of five hundred Pounds apiece, had been in Concert with my Lord Chancellor. I underſtood it to be ſo; I don't know whether my Lord gave Orders that it ſhould be ſo.

Mr. Com. Serj. I deſire he may be asked who it was that told him ſo?

Mr. Edwards. I think *Mr. Hiccocks* told me ſo.

Mr. Serj. Probyn. My Lords, we have done.

Mr. Robins. I deſire to know what Anſwer *Mr. Hiccocks* gave to the Queſtions he asked?

Mr. Edwards. Only that my Lord was acquainted with it, and had the State of *Mr. Dormer*'s Office laid before him.

Mr. Serj. Pengelly. My Lords, if they have done, we only beg leave to obſerve, that they have been eſtabliſhing the Notice of this whole Deficiency on the Earl, upon the firſt Vacancy in the Office, even before *Mr. Edwards* came in; ſo that the whole Tranſaction afterwards proceeded upon a full Notice of the Circumſtances and State of the Office. The Evidence of the Contribution of the Maſters, and of the Earl of *Macclesfield*, towards making good this Deficiency, prevents, in a great meaſure, our bringing any Proof to the fifteenth Article, which is now going to be opened.

Mr. Plummer. My Lords, if they have done, I only beg leave to obſerve, that the very letting *Mr. Edwards* pay his five thouſand Pounds to the Deficiency of the Office, and my Lord *Macclesfield*'s not taking it to his own Uſe, is a ſufficient Proof of his Knowledge of the Deficiency. And as to this Compoſition, I have one Queſtion more to ask. I think he ſays he mention'd it to two or three Maſters; I deſire to know if he did ſo, and whether they approv'd it?

Mr. Edwards. I think one of the two or three Maſters was *Mr. Lightboun.* He was there, and he did ſay, as I remember, that he thought we might as well loſe the whole, as take ſo ſmall a part of ſuch a Debt.

Mr. Plummer. I deſire another Queſtion, and that is, if he conſulted any of *Mr. Wilſon*'s Creditors before he made this Compoſition?

Mr. Edwards. No, my Lords, I did not know any of them.

Mr. Serj. Pengelly. How much did he receive in the whole from the Maſters?

Mr. Edwards. I received five hundred Pounds from nine of them.

Mr. Serj. Pengelly. Did any of the Maſters, and which, refuſe?

Mr. Edwards. Yes, *Mr. Lightboun* refuſed.

Mr. Serj. Pengelly. For what Reaſon?

Mr. Edwards. That I can't tell; he did not give any particular Reaſon.

Mr. Com. Serj. My Lords, I believe it may be neceſſary to trouble your Lordſhips with asking another Queſtion: Whether this Diſcourſe in Relation to this Compoſition, was before or after the Compoſition made?

Mr. Edwards. I believe it was before.

Mr.

Mr. Com. Serj. Then I desire to know whether Mr. *Edwards*, upon that or any other Occasion, acquainted the noble Earl of it?

Mr. Edwards, No, I don't remember I did.

Mr. Sol. Gen. My Lords, I believe we have done with these two Articles.

Sir John Rushout. My Lords, the Commons proceed to the fifteenth Article against *Thomas* Earl of *Macclesfield*, and they have entrusted me to lay open to your Lordships the Subject matter of this, and the two ensuing Articles, and the Nature of the Evidence they think proper to produce to make good the Charge in these Articles; by which it will appear to your Lordships very fully, that the Crimes charged upon the Person at your Bar, which have already been manifested in so many Instances, did not proceed from Mistake, or mere Negligence; altho' these would have been Faults not excusable in a Person placed in so high a Station, but that they were the Effects of Art and Contrivance, formed to carry on and promote a corrupt and illegal Gain and Advantage to himself.

It may seem at first sight very surprizing, and may not readily obtain Belief with your Lordships, that a Person rais'd by his Majesty's abundant Goodness, to Stations of so great Honour and Profit, who had received large Additions to a plentiful Income by successive and repeated Grants from the royal Bounty, that such a Person should condescend to receive, much more that he should use Arts and Stratagems to obtain further Supplies to his insatiable Thirst of Lucre.

But this your Lordships will plainly see to be the Case, when we have given our Proofs to the fifteenth, sixteenth, and seventeenth Articles. Your Lordships have already heard that there was a very great Deficiency and Loss of the Suitors Money in the Office of Mr. *Dormer*, a late Master in the Court of *Chancery*; that the Earl at your Bar then presiding in that Court, well knew that there was such a Deficiency; that instead of applying Remedies to redress the Evil, he made use of several Methods to cover and conceal it; it being very obvious for him to reflect, that if such a Deficiency was publickly known, and not effectually remedied, none would ever after purchase a Master in *Chancery*'s Place, at least not at such exorbitant Prices to which the Purchase had lately been raised.

What then must be done? here was like to be an entire Stop put to this Branch of Revenue which had yielded so plentifully, and proved so beneficial to his Lordship.

The Contrivance therefore is to oblige the Masters, who had already paid for their Places, to pay again towards making good this Deficiency, and by an artful drawing them to a Compliance in this Point, to conceal and continue the Mischief.

This is what the Commons charge in the fifteenth Article, that the Earl of *Macclesfield*, to conceal the Deficiency in Mr. *Dormer*'s Office, did order several Masters of the Court to bring in their Accounts of the Cash, Effects, and Securities belonging to the Suitors which were in their Hands, with Intent to terrify the Masters thereby, so far, as to oblige them to contribute large Sums to answer the Demands of that Office: And further to engage them to a Compliance in that Respect, he represented to them, that unless they would do it, the Money and Effects of the Suitors would be taken out of their Hands: That by this means he did induce nine of the Masters to contribute five hundred Pounds apiece, which several of them did out of the Suitors Money in their Hands; and this being done, they were never obliged to bring in their Accounts.

What Answer is given to this Charge? The Answer hath been read, and I need not trouble your Lordships with a Recital of it. But the Earl admits that he gave such Orders that the Masters should bring in their Accounts:

That several Masters did afterwards pay and contribute as is charged:

That they were not afterwards obliged to bring in their Accounts.

But then in Excuse he alledges, That this was not done to terrify the Masters to make any Contribution to the Demands on *Dormer*'s Office:

That what they did contribute, he believes they paid freely, and out of their own Money:

That he believes he follow'd therein a Precedent of the like Nature in the Failure of Dr. *Edisbury*.

That he continued to call for the Accounts, but was convinced how tedious a Work it would be, what Obstruction it would give to the Business of the Court, so he laid it aside; and observes, that what is lately done with respect to the Accounts of the Masters, shews the insuperable Difficulties of such an Undertaking.

From this Answer your Lordships may reflect, how just the Observation is, that the Commons have made in their Replication, when they say, the Earl of *Macclesfield* hath industriously avoided giving a direct and particular Answer to several matters positively and certainly alledged against him, which from the Nature of the Facts themselves must necessarily lye in his own Knowledge.

For he admits the Fact charged upon him by the Article; but to that part of it which charges that this was done to conceal the Deficiency in *Dormer*'s Office, he makes no Answer at all.

And where the Article charges, that in order to obtain what is own'd to be done, he did represent to the Masters, that unless they would comply, the Money and Effects of the Suitors should be taken out of their Hands; to this likewise he makes no Answer.

My Lords, It may be difficult for me who am little conversant in Law Proceedings, to lay this matter in its strongest Light before your Lordships. But I take the Case to be this.

The Commons charge, that the Earl of *Macclesfield*, to conceal the Deficiency in *Dormer*'s Office, ordered the Masters to bring before him their Accounts of the Suitors Effects, and threatned that unless they would contribute towards that Deficiency, those Effects should be taken out of their Hands: They contribute, the matter is dropt, and no Accounts are ever brought before him.

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The Earl acknowledges that he order'd thoſe Accounts to be brought before him; that upon his giving that Order ſeveral Maſters contributed 500*l.* apiece, and that afterwards the bringing the Accounts was dropt; that this was done to conceal *Dormer*'s Deficiency, and procured by the Menace of taking the Effects of the Suitors out of the Hands of the Maſters cannot be denied: What part of the Charge then remains unadmitted? I muſt ſubmit it to your Lordſhips, whether, upon what the Earl hath allowed in expreſs Terms by his Anſwer, as well as what he hath admitted by not anſwering at all, the whole Charge of this Article doth not ſtand confeſſed, and the Commons might demand Judgment againſt the Earl, upon this Article, upon his own Confeſſion.

But the Earl adds ſome things by way of Excuſe, I ſuppoſe, or Extenuation of the Offence; how immaterially and how evaſively your Lordſhips will ſoon obſerve.

He denies, that the ordering the Maſters to bring in their Accounts, was done to terrify them to make any Contribution towards *Dormer*'s Deficiency, and yet there is not the leaſt Appearance of any other End, or Deſign, for which it could be done; nor does he mention, or ſo much as pretend to any other End which with the leaſt Colour of Reaſon could be intended by it; he ſays, indeed, he had a Mind to know the State and Condition of the ſeveral Offices, that he might be able to make proper Regulations concerning them; but the thing was dropt before he had this Knowledge given him, and before he made any one Regulation in the matter; and yet he ſolemnly declares that this was his real and whole Intention: If it was his Intention how came he to alter it ſo ſoon? Could it not laſt till one Regulation was made in a Matter which wanted it ſo much?

Your Lordſhips will from hence judge, That the Crime which the Commons charge upon the Perſon at your Bar was not a Sin of Ignorance; he was informed of the Miſcarriage of the Officers of his Court, he was conſcious that it needed Regulation, he had ſometime a Thought and Intention to make ſuch Regulation; but, alas, it ſoon proved abortive, and the intended Reformation, however neceſſary for the Honour of the Court, as well as the Safety and Advantage of the Subject, was ſoon laid aſide: A Conduct ſo weak and ſo greatly inconſiſtent, as not to be accounted for in any Perſon, who had not been capable of pleading Innocence and Pardon to the ſame Fact.

However his Lordſhip having found it neceſſary to excuſe this proceeding with the Maſters, by pretending an Intention to make ſome Regulations concerning them; it became as neceſſary, in the next Place, to make ſome Apology for not proceeding to ſuch a Regulation.

And for this he ſays, that it would be a difficult and tedious Work:

That it would be an Obſtruction to the Buſineſs of the Court:

That what has been lately done ſhews the inſuperable Difficulties of the Undertaking.

I may reaſonably fear I ſhould grow tedious to your Lordſhips if I ſhould attempt to take notice of all the Inconſiſtences, Inconſequences and Evaſions in the Anſwer to this ſingle Article.

Upon what Account was the Perſon now at your Bar advanced to the higheſt Station of the Law; intruſted with the diſtribution of Juſtice and Equity in his Majeſty's ſupreme Court in *Weſtminſter-Hall*, if it was not to ſecure the Property of the Subject to thoſe to whom it did in Conſcience belong? And upon what Account were the Moneys brought into Court depoſited with the Maſters, but only for ſafe Cuſtody, till it appeared to whom Equity wou'd determin the Right?

But when it was once manifeſt that thoſe, who were employed in this Truſt, had ſhamefully broken it, and by notorious Miſmanagement were likely to bring Ruin to all the Suitors of the Court, was it fit to cheriſh and cover up the Evil becauſe it was a difficult and tedious Work to redreſs it? Was it likely to be leſs difficult by the Delay, or rather did not every Day propagate and increaſe the Miſchief, and make it leſs capable of Remedy? Or could any thing be more proper for the Buſineſs of the Court?

Your Lordſhips have too great Sagacity not to diſcern the Weakneſs of ſuch an Excuſe, nor will you eaſily be perſuaded to believe, That the Earl of *Macclesfield* was only going on in a Path his Predeceſſors trod before him, or that he is to be ſheltred, becauſe what hath been ſince done hath met with Difficulties in the Undertaking.

It is known, how upon the firſt Failure, in the Time of his Predeceſſors, an effectual Remedy was immediately applied; and that thoſe, who have ſince attempted to give an helping Hand, have prevented any new Eruption of the Evil complained of; and if the Undertaking was attended with Difficulties, their Care and commendable Zeal for the publick Service have already been able to ſurmount them in ſome Meaſure; altho' the groſs Encouragements given by the Earl of *Macclesfield* had laid ſuch a ſtrong Foundation for thoſe Difficulties, as if he had deſigned really to make them inſuperable, that they might ſerve for ſuch a Sort of Excuſe as he now endeavours to draw from them.

But the Earl alledges further, that he believes the Maſters, who contributed towards *Dormer*'s Deficiency, did it freely and out of their own Money; and that in bringing them to contribute he followed the Precedent in Dr. *Edisbury*'s Caſe.

I need not trouble your Lordſhips long upon this Branch of the Article, ſince no one beſides his Lordſhip can well believe the Maſters contributed freely; and the Proof we ſhall lay before your Lordſhips upon this Head will give full Satisfaction, that none of them did it freely, nor all of them out of their own Money; nor is it the Crime the Commons charge, that the Maſters were prevailed on to contribute towards the Deficiency; but that the Earl, whoſe high Station made it his Duty, when he was inform'd of the Deficiency, to take Care to redreſs it, did not, as in the Caſe of Dr. *Edisbury*, provide that the whole Money belonging to the Suitors ſhould be effectually anſwered; but inſtead of following that Precedent in the juſt and honeſt Uſe of it, he turned it to anſwer his own corrupt Purpoſes, and to conceal from public Notice, that Loſs to the Suitors which it was his Duty to have wholly prevented.

The next Article we proceed to is the ſixteenth, which charges, that one *Elizabeth Chitty* having obtained an Order of the 17*th* of *March*, in the tenth Year of his preſent Majeſty, whereby Mr.

Edwards, who ſucceeded in Mr. *Dormer*'s Office, was order'd to pay 1000 *l.* part of a very large Sum due to her, which had been paid into *Dormer*'s Hands; Mr. *Edwards* complained of this as an Hardſhip to him, who had never received the Money; upon this the Earl would have perſuaded the reſt of the Maſters to pay the Money to prevent a Parliamentary Enquiry, and they refuſing, he paid it himſelf to one *Mr. Lochmann* for the Uſe of the ſaid *Mrs. Chitty*; with Intimations however, that ſhe muſt not expect any more of the 10000 *l.* which had been paid on her Account into *Dormer*'s Hands.

Your Lordſhips will be ſurprized at the Detection here made both of the Guilt and the Boldneſs of the Offender; that the Perſon, who is ſo ſenſible of his Crime, as to tell the Maſters this Matter would affect both himſelf and them, who diſcerns the monſtrous Conſequences of the Miſchief before him, who foreſees the Puniſhment of that Crime by a Parliamentary Enquiry; that this Perſon, inſtead of applying Remedies to the Evil, ſhould uſe little Artifices only to conceal it.

What Anſwer gives the Earl to this Charge? He admits the Order made, and that *Mr. Edwards* refuſed to pay the 1000 *l.* that he himſelf paid the Money, and told *Lochmann* that was all they muſt expect from him; but he does not believe he had any Diſcourſe with the Maſters to perſuade them to pay the 1000 *l.* to *Lochmann*.

Your Lordſhips muſt be convinced of the Guilt when the Offender himſelf hath not the Aſſurance to deny it; he cannot deny but that he knew and repreſented the Conſequences that would enſue what was done; that it would produce a Parliamentary Enquiry; that it would affect himſelf as well as the Maſters, and that it would hazard the Forfeiture of their Offices. Your Lordſhips have now an Opportunity to vindicate the Honour of Parliaments, and to have this Inſtruction to Poſterity; that thoſe who foreſee their unwarrantable Actions will give Occaſion for a Parliamentary Enquiry, ſhall not be able by any Contrivances, by any Means whatever, to evade the Juſtice of it.

As to the laſt Part of this Article, which charges, that, on a Motion in a Cauſe, *Harper* againſt *Caſe* and others, relating to 260 *l.* which having been paid into *Mr. Dormer*'s Hands was in danger of being loſt, the Earl falſly and deceitfully declared he had heard there was a Deficiency in *Dormer*'s Office, but knew nothing of it only as public News: The Commons will give ſufficient Evidence to your Lordſhips of the Truth of this Charge.

The Earl indeed gives a large Account of this Cauſe and the Orders made in it, and then concludes, he believes he expreſſed himſelf to this Effect, That he had indeed heard of *Dormer*'s Deficiency, but that it had never come judicially before him upon Complaint of any of the Suitors of the Court; that ſeveral Circumſtances taken Notice of at large had concurr'd thereto, and adds, that he ſaid he did not know how all theſe things would come out, and expreſſed himſelf to that effect and no other; and upon all this Circumlocution in the Anſwer, without any denial of the Words as they ſtand charged, we have reaſon to believe your Lordſhips would be very well ſatisfied without further Proof, that the Words mentioned in the Article were undoubtedly uſed by the Earl of *Macclesfield*.

It is further obſerv'd by the Earl, that this happened after ſuch time as the Maſters Accounts had been laid before the Lords of the Council, and had been under the Examination of the Judges and others to whom they had been referr'd by his Majeſty; and there may be ſome reaſon to doubt whether the Knowledge of a Deficiency had been ſo ſoon declared by his Lordſhip, if the Examination under which his Majeſty's abundant Goodneſs and Care for his People had put thoſe Accounts, had not already laid open and made a public Diſcovery of it.

The ſeventeenth Article charges, that tho' the Earl of *Macclesfield* knew of the great Deficiency in *Dormer*'s Office, yet to conceal it, in order to carry on his corrupt and unjuſt Deſigns, he made Orders upon *Mr. Edwards* for the payment of ſeveral Sums, which were paid without Regard to the Proportion the reſt of the Suitors were juſtly entitled to out of *Dormer*'s Effects, and conſequently to their great Loſs and Prejudice: To this the Earl anſwers with his uſual Candour, That he never endeavour'd to conceal the Deficiency, but as he was under a full Perſuaſion it would in due time be made good; that he did not think it incumbent on him *ex officio* to make a Declaration of an Average; that he doth not know any Order was made by him for Mr. *Edwards* to pay Money lodged with Mr. *Dormer*, but believes ſeveral Orders were made by the Court for that Purpoſe.

Your Lordſhips upon the bare reciting the Words of the Anſwer, will perceive the Art and Fallacy of the Anſwerer; he doth not know any Order was made by him, but believes ſeveral were made by the Court; as if he could hope to make your Lordſhips believe, he was a Stranger to, and unconcern'd in the Orders made by the Court, of which he was the only Judge.

He admits he did endeavour to conceal the Deficiency, but was perſuaded it would be made good in due time, without acquainting your Lordſhips with any Grounds for that Perſuaſion, or even mentioning when he thought that due time would come.

He intimates it was incumbent to make a Declaration of an Average, but thought it not incumbent upon him to make it *ex officio*: He could not deny it to be the moſt equal Rule, that if a Loſs was inevitable, an Average ought to be made; that the Loſs might be born equally and in Proportion among all: He could not deny the making Orders to pay ſome was inconſiſtent with, and deſtructive to this Equality; and he could not however think it incumbent on him to do this *ex officio*, and yet it belonged to to no body's Office but his own to effect it.

Thus your Lordſhips may obſerve how, to every Article, the Anſwer either admits the Charge or uſes looſe, general, or foreign Circumlocutions to evade it, when the Evidence of the Fact will not allow him to deny it; yet he would be thought to ſay ſomething at leaſt in excuſe: But his Knowledge of your Lordſhips ſuperiour Underſtanding, ought to have deterred him from all Expectations of impoſing upon your Lordſhips by any little Shifts and Artifices of this kind; nor ſhould he hope to paſs here the Anſwer as ſufficient, which muſt have been reported contrary, if I am rightly informed of the Practice, by any of the Maſters of his Court.

But I ſhall not longer detain your Lordſhips with Obſervations in matters in themſelves ſo evident; what is admitted to every one of theſe three Articles is ſufficient to juſtify the Charge of the Commons, and whatever remains but imperfectly admitted, we doubt not, by Witneſſes and other Proofs, to make out to your Lordſhips intire Satisfaction.

My Lords, It is a Province enjoined me likewiſe, to maintain the Charge exhibited by the Commons of *Great Britain*, in the fifteenth, ſixteenth, and ſeventeenth Articles of their Impeachment againſt *Thomas* Earl of *Macclesfield*. And it is with the greater Chearfulneſs I undertake that Province, ſince I come to demand that Juſtice, which your Lordſhips are always diſpoſed to adminiſter, to every Subject of *Great Britain*; and therefore I cannot but be fully aſſured of your juſt Inclinations, to do equal Right where it is demanded by the Houſe of Commons, the Repreſentative Body of the whole united Kingdom.

It is very ſtrange, that the Earl now under Proſecution; who hath been ſo many Years within the Walls of this Houſe; who hath ſo long been Witneſs of your Lordſhips great Integrity and Wiſdom, ſhould not thereby be deterred from attempting what might ſubject him to your Cenſure. But it is ſtill more unaccountable, that a Perſon, who hath had ſo long Experience of that Judgment and Sagacity, whereby you skilfully diſtinguiſh between right and wrong, ſhould hope, by the Artifice of Words, and looſe, general, evaſive Expreſſions; that he ſhould ever hope, I ſay, My Lords, by ſuch Fig-Leaves as theſe, to hide himſelf from the Eyes of your Lordſhips impartial Juſtice.

The worthy Gentleman, who hath preceded me upon this Head, hath ſo fully open'd the ſeveral Articles now under Conſideration, and hath ſo clearly detected the Sophiſtry, and Inſufficiency of the Anſwers that are given to them, that I ſhall not need to be long upon that Head; it would indeed be difficult to add any thing new to what hath already been obſerved, did not the innumerable Fallacies and Inconſiſtencies with which his Anſwer abounds, continually ſupply freſh Materials for Obſervation.

But I ſhall content my ſelf only to take notice upon the Anſwer to the fifteenth Article, that the Earl ſtands in a Manner convicted by his own Confeſſion: He admits the Fact, but would avoid the Conſequence by ſaying, that he really intended to make the Maſters bring in their Accounts, altho' he did not do it: If it was intended, why was it not done? It was a difficult and a tedious Work.

I am ſurpriſed, my Lords, to find that any Perſon ſhould expect to ſatisfy your Lordſhips, by ſo weak, and frivolous an Excuſe.

A Perſon who preſides in the higheſt Court in *Weſtminſter-Hall*, is informed of ſome unwarrantable Practices of the Officers to whom the Money of the Suitors is intruſted, which for want of due Care hath already proved very pernicious, and muſt in time prove deſtructive to the Property of all the Suitors of that Court, unleſs ſome ſpeedy Check be put to this growing Evil: is convinced the Matter needs Regulation; but he lets it go on, becauſe it would be a difficult and tedious Work to redreſs it.

In moral Evil, my Lords, the Continuation of the Practice of an ill Habit, becauſe it is difficult to break it, is ſo far from extenuating, that it is juſtly eſteemed to aggravate the Fault; and I don't doubt but that your Lordſhips will have the ſame Sentiments in this Caſe; for ſince it was neceſſary to apply a Remedy, the ſooner it was done the better, and the Difficulty of the Work ſhould have been a Spur, rather than a Check to a vigorous Endeavour for redreſſing it.

In his Anſwer to the ſixteenth Article, your Lordſhips will obſerve the ſame Prevarication ſpread through the whole: The Widow *Chitty* having a conſiderable ſum of Money, to which ſhe was intituled, brought into Court, and depoſited in Mr. *Dormer*'s Hands for the ſafe Cuſtody of it only, petitions for 1000 *l.* part of her own Money; ſuch a Petition could not be denied intirely, without bringing on a ſpeedy Inquiry of the Cauſes and Occaſions of the Embezzlement which had happen'd in that Office; and the Diſcovery muſt have brought on a Neceſſity of remedying the Evil, that would thereby have been made ſo publick, and ſo notorious.

An Order therefore is granted, that the 1000 *l.* ſhould be paid; but then the Difficulty is renewed, how to make that Payment without diſcovering to the Publick the Miſmanagement; which muſt have put a ſtop to the Sale of the Maſters Places, which were diſpoſed of at exorbitant Prices, and brought in an immenſe, tho' illegal Gain. Mr. *Edwards* would not pay it; he had no Money of Mr. *Dormer*'s in his Hands; the next Application was made to the Maſters of the Court, to ſee if they could be prevailed on once more to raiſe a Sum by Contribution amongſt them; to this End they were told, that if they did not comply, *Dormer*'s Deficiency would be diſcovered; and that might occaſion a Parliamentary Inquiry, the Conſequence of which might be, the Forfeiture of their Offices, bought contrary to the Statute of *Edward* the ſixth: that this might affect himſelf a little, but them much more; all this, my Lords, is charged in this Article, and not denied by the Earl, but in ſuch a lamentable, evaſive Manner, as betrays more Guilt than an open, an ingenuous Confeſſion.

It paſſes my Obſervation, in that little View I have been able to make of paſt Times, that any Judge of a Court in *Weſtminſter-Hall*, ſhould own the Knowledge of ſo great a Crime in the Officers of his Court, as that they came into their Places contrary to Law, without any Cenſure, or Blame for it.

But that a Perſon raiſed by the unmerited Bounty of his Majeſty, to preſide in the higheſt Court there, to conduct the Adminiſtration of Juſtice agreeable to the Rules of Equity and good Conſcience, as his Majeſty's Vicegerent in that great Station; that ſuch a Perſon ſhould not only be conſcious of the Illegality of the Maſters obtaining their Places, and a Party to ſuch Illegality, but ſhould have the Aſſurance to make uſe of that as an Argument, to extort Money from them, in order to prevent the Diſcovery, and the Puniſhment conſequent thereto, will, I perſuade my ſelf, ſtir up in your Lordſhips the greateſt Indignation.

It ſeems he apprehended the Terror of a Proſecution by Parliament might have ſome Effect upon them, and engage them to comply with his Demands,

mands, altho' it had not the leaſt Effect upon himſelf. It was a proper Expedient to bring them in to a Contribution of a 1000 *l.* but it was not ſufficient to deter him from thoſe Practices, which juſtly merited ſuch a Proſecution.

Our Anceſtors thought it became them to keep in Awe the greateſt Subjects in the Realm, and none were too big to be called to Account for the Wrongs and Injuries they did the Publick; the Caſe of *Michael de la Pole* in *Richard* the Second's Time, and Card. *Woolſey* in *Henry* the Eighth's, with many others, ſome of which have been already mentioned to your Lordſhips, are flagrant Inſtances of it. And we have now a juſt Opportunity of ſhewing, that we have the ſame regard for the Honour of Parliaments, and the Good of the People; that no one ought to preſume to tranſgreſs the Laws, be his Station, or his Power never ſo highly advanced, upon proſpect of Impunity; ſince a *Britiſh* Parliament can reach the moſt lofty, and puniſh the moſt inſolent, corrupt Offender: So that he, who is not reſtrained within the Limits and Boundaries of the Law out of Awe and Reverence to it, muſt expect to fall a Sacrifice to the Power of their Juſtice.

Your Lordſhips have here an Inſtance of one placed at the Head of the Law, who is conſcious that his Actions are contrary to it; who makes no Scruple of avowing this, where it may ſerve his Intereſt, defies a Parliamentary Inquiry, and goes on in Practices which he knows, and profeſſes to be illegal. Your Lordſhips will obſerve how he endeavours to ſhelter himſelf from Danger, and by an infamous Degree of Diſſimulation; what he openly avows to raiſe a Contribution from the Maſters of the Court, he more publickly denies, with deſign to carry a plauſible Appearance in this Affair to the People.

The Deficiency of *Dormer* at laſt became a publick Clamour; it was not *Mrs. Chitty* only, but many others wanted their Money depoſited and entruſted in the Hands of the Court, and by the Court entruſted to the Cuſtody of the Maſter; and the Suitors then made open Complaint upon this Subject. In the Cauſe therefore of *Harper* and *Caſe*, a Motion being made, that 260 *l.* lodged in *Dormer*'s Hands might be paid before the Execution of the Conveyance, directed by the Court; he who had been ſo long informed of the ſhameful Embezzlement of the Money of the Suitors in *Dormer*'s Office, who had invented ſo many artful Contrivances to conceal the Knowledge of it from the Publick, in order to ſerve his own private, unjuſt, corrupt Deſigns, the Matter being now declared in open Court, he could no longer deny the Knowledge of what he was ſo plainly informed of; that therefore all By-ſtanders might imagine his Care and Concern for the publick Good was ſo extraordinary, that he could not have forborn to have remedied the Miſchief if he had been before apprized of it; he then publickly and falſly declared that he had heard there was a Deficiency in *Dormer*'s Office, but that he knew nothing of it but as publick News. In the Earl's Anſwer, my Lords, he explains this Expreſſion, by ſaying, that it never came judicially before him upon the Complaint of any of the Suitors of the Court: This I am perſuaded your Lordſhips will think a very poor Excuſe, that he who was the Protector of all the Fortunes of the Fatherleſs and Lunaticks, ſhould not upon the firſt Intimation, or even Suſpicion that they were like to be Loſers, cauſe a ſtrict Examination to be made into it.

It can ſcarce be believed a Perſon who has ſo great a Capacity to judge in what manner he ought to act, ſhould ever deſcend to ſo low a Degree, ſo unworthy the Station in which he was placed, ſo unworthy the Dignity and Honour to which he had been advanced, as to deny the Knowledge (otherways than as News and accidental Diſcourſe) of what he had been ſo frequently informed, and what he had taken Pains ſo long, and ſo deliberately to conceal.

I need not uſe any Words to repreſent to your Lordſhips the Indignity of ſuch Prevarication, who will upon the firſt Intimation be ſenſible of every thing that may ſeem in the leaſt Degree to depart from the Rules of Honour: It is indeed almoſt inconceivable, that a Perſon advanced to be a Part of your noble Body, ſhould ſo far forget himſelf and you; it is what, if he could have expreſly denied by his Anſwer, we muſt have deſpair'd to have gain'd Credit in, tho' we could have proved it by inferior Witneſſes; but his Anſwer will ſufficiently convince your Lordſhips of the Truth of the Allegation; for he who could not directly deny a Charge of ſo groſs a Crime, muſt by his own Silence, in a Matter of ſo heavy a Nature, be concluded to be guilty of it.

I have already detained your Lordſhips ſo long upon this ſixteenth Article, that I ſhall not take the liberty of trying your Patience by making any Obſervations upon the Seventeenth, but ſhall leave it to the Gentleman that is appointed to aſſiſt in it.

It contains only repeated Inſtances of a corrupt Endeavour, ſtill to conceal the Knowledge of that Deficiency from the Publick, which it was his Duty to have prevented; or at leaſt to have ſupplied, and rather to have made it good, than have conceal'd it. What Ground or Reaſon could there poſſibly be, why a Miſchief of this Kind, if it did happen by Accident, ſhould with ſo much Induſtry be covered and continued? when that Concealment could anſwer no good or honeſt Purpoſe, but muſt by the Delay increaſe and grow more deſperate, and tend to bring Deſtruction and Ruin to the Suitors of the Court?

But as your Lordſhips, by the Proofs upon the former Articles, had an Opportunity to take notice what large Sums of Money had been paid for the Purchaſe or Exchange of the Places of the Maſters of the Court of *Chancery*; it is natural to conclude from thence, that the Maſters were neceſſarily to be indulged in making uſe of the Suitors Money in their Hands, in order to make up the vaſt Sums they had given for their Offices; and if there had been Miſcarriages in Attempts of that kind (which in bold Adventurers for ſuch Ends could hardly be avoided) the Diſcovery of ſuch a Miſchief would have made it abſolutely neceſſary to have removed the Money from thoſe who had proved ſuch unfaithful Stewards, or at leaſt to have obliged them to have given proper Securities to indemnify thoſe, whoſe Fortunes were intruſted to their Care, from any Loſs which might happen by their Miſmanagement; the Conſequence of which Caution muſt unavoidably have drawn on a Retrenchment

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Mr. *Thompſon*. My Lords, I am commanded by the Commons to aſſiſt in maintaining the fifteenth, ſixteenth, and ſeventeenth Articles of their Impeachment. The Gentlemen who have gone before me, have acquitted me from giving your Lordſhips any Trouble upon two of theſe Articles; and I count it my good Fortune that the Third is fallen to my Lot, ſince the Evidence to prove the Charge contain'd in it, is ſo very clear and direct, that little need be ſaid, either to ſhew the Neceſſity of the Accuſation, or the Truth of the Facts alledg'd by the Commons.

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But admitting, my Lords, "That the Earl had "this full Perſuaſion, and that no Application was "made to him to ſtop Payment:" What Juſtification does he draw from thence? "That he did "not think it a Duty incumbent upon him, "*ex officio*, to make a Declaration of an Ave-"rage."

mands, altho' it had not the leaſt Effect upon himſelf. It was a proper Expedient to bring them in to a Contribution of a 1000 *l.* but it was not ſufficient to deter him from thoſe Practices, which juſtly merited ſuch a Proſecution.

Our Anceſtors thought it became them to keep in Awe the greateſt Subjects in the Realm, and none were too big to be called to Account for the Wrongs and Injuries they did the Publick; the Caſe of *Michael de la Pole* in *Richard* the Second's Time, and Card. *Woolſey* in *Henry* the Eighth's, with many others, ſome of which have been already mentioned to your Lordſhips, are flagrant Inſtances of it. And we have now a juſt Opportunity of ſhewing, that we have the ſame regard for the Honour of Parliaments, and the Good of the People; that no one ought to preſume to tranſgreſs the Laws, be his Station, or his Power never ſo highly advanced, upon proſpect of Impunity; ſince a *Britiſh* Parliament can reach the moſt lofty, and puniſh the moſt inſolent, corrupt Offender: So that he, who is not reſtrained within the Limits and Boundaries of the Law out of Awe and Reverence to it, muſt expect to fall a Sacrifice to the Power of their Juſtice.

Your Lordſhips have here an Inſtance of one placed at the Head of the Law, who is conſcious that his Actions are contrary to it; who makes no Scruple of avowing this, where it may ſerve his Intereſt, defies a Parliamentary Inquiry, and goes on in Practices which he knows, and profeſſes to be illegal. Your Lordſhips will obſerve how he endeavours to ſhelter himſelf from Danger, and by an infamous Degree of Diſſimulation; what he openly avows to raiſe a Contribution from the Maſters of the Court, he more publickly denies, with deſign to carry a plauſible Appearance in this Affair to the People.

The Deficiency of *Dormer* at laſt became a publick Clamour; it was not *Mrs. Chitty* only, but many others wanted their Money depoſited and entruſted in the Hands of the Court, and by the Court entruſted to the Cuſtody of the Maſter; and the Suitors then made open Complaint upon this Subject. In the Cauſe therefore of *Harper* and *Caſe*, a Motion being made, that 260 *l.* lodged in *Dormer*'s Hands might be paid before the Execution of the Conveyance, directed by the Court; he who had been ſo long informed of the ſhameful Embezzlement of the Money of the Suitors in *Dormer*'s Office, who had invented ſo many artful Contrivances to conceal the Knowledge of it from the Publick, in order to ſerve his own private, unjuſt, corrupt Deſigns, the Matter being now declared in open Court, he could no longer deny the Knowledge of what he was ſo plainly informed of; that therefore all By-ſtanders might imagine his Care and Concern for the publick Good was ſo extraordinary, that he could not have forborn to have remedied the Miſchief if he had been before apprized of it; he then publickly and falſly declared that he had heard there was a Deficiency in *Dormer*'s Office, but that he knew nothing of it but as publick News. In the Earl's Anſwer, my Lords, he explains this Expreſſion, by ſaying, that it never came judicially before him upon the Complaint of any of the Suitors of the Court: This I am perſuaded your Lordſhips will think a very poor Excuſe, that he who was the Protector of all the Fortunes of the Fatherleſs and Lunaticks, ſhould not upon the firſt Intimation, or even Suſpicion that they were like to be Loſers, cauſe a ſtrict Examination to be made into it.

It can ſcarce be believed a Perſon who has ſo great a Capacity to judge in what manner he ought to act, ſhould ever deſcend to ſo low a Degree, ſo unworthy the Station in which he was placed, ſo unworthy the Dignity and Honour to which he had been advanced, as to deny the Knowledge (otherways than as News and accidental Diſcourſe) of what he had been ſo frequently informed, and what he had taken Pains ſo long, and ſo deliberately to conceal.

I need not uſe any Words to repreſent to your Lordſhips the Indignity of ſuch Prevarication, who will upon the firſt Intimation be ſenſible of every thing that may ſeem in the leaſt Degree to depart from the Rules of Honour: It is indeed almoſt inconceivable, that a Perſon advanced to be a Part of your noble Body, ſhould ſo far forget himſelf and you; it is what, if he could have expreſly denied by his Anſwer, we muſt have deſpair'd to have gain'd Credit in, tho' we could have proved it by inferior Witneſſes; but his Anſwer will ſufficiently convince your Lordſhips of the Truth of the Allegation; for he who could not directly deny a Charge of ſo groſs a Crime, muſt by his own Silence, in a Matter of ſo heavy a Nature, be concluded to be guilty of it.

I have already detained your Lordſhips ſo long upon this ſixteenth Article, that I ſhall not take the liberty of trying your Patience by making any Obſervations upon the Seventeenth, but ſhall leave it to the Gentleman that is appointed to aſſiſt in it.

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How contradictory, my Lords, How inconſiſtent is this with his Anſwer to the fifteenth Article! There he pleads the Caſe of Dr. *Edisbury*, and in that Caſe an Average was declar'd. The Precedent was follow'd to encourage a Contribution, but was laid aſide when it directed him to ſecure the Suitors their Proportions. Here I can't help obſerving, that as the Earl has thro' the whole Series of his Actions copied Precedents from the worſt Views, ſo he has now quoted them in the moſt diſadvantageous Manner. When his Predeceſſors took ſmall Sums, he ventur'd by their Examples to ſwell his Demands to exorbitant Prices; but when their Patterns ſhou'd have led him to a nice and ſcrupulous Caution in the Choice of his Officers, he diſdain'd to tread in their Footſteps. And, my Lords, This Precedent was good for the corrupt Purpoſe of concealing a Deficiency, but ceas'd to be ſo, when it was to do Juſtice to the injur'd Suitors. He has turn'd his Weapons upon himſelf, and if Dr. *Edisbury* guards him in one Article, he muſt of neceſſity wound him in another.

What I ſhall next take notice of in his Anſwer is, "That he does not know any Orders were "made by him except in the Caſe of *Chitty*." That Caſe is attended with ſuch Circumſtances, and may be follow'd by ſuch Conſequences, that he has not yet, nor will, I dare ſay, ſoon forget it: However, I preſume he will recollect others when we produce his own original Orders for three ſeveral Payments, one of 400 *l.* another of 642 *l.* and a third of 2000 *l.*

This Evidence alone, my Lords, would ſupport this Article, but the Earl has thoroughly confirmed the Charge in his next Sentence. "He believes "Orders have been made by the Court."

Tho' his own Orders were criminal, Orders from the Court were innocent, till they received his Stamp of Guilt, who knowing the Condition of the Office, commanded "Payments to be made as Orders came "in." The impeach'd Lord (and were this his only Offence, therefore juſtly impeach'd) commanded theſe Payments.

His Defence is again become his Accuſation. Orders from the Court wou'd have ended, had he ſuffer'd the Maſter to ſtop Payment, but that would have diſclos'd what he took ſuch unwarrantable Pains to conceal; and from that Concealment aroſe the Injuries to the Suitors; that was the malignant Ground-work of his infamous Deſigns, and is now the Subject of our juſt Charge.

Certainly the Earl did not mean here obliquely to inſinuate that he had a Sharer in his wicked Adminiſtration, or to bring another great Name in queſtion with his. That were not for his Service. Characters, my Lords, receive their Luſtre from their Foils.

My Lords, I have open'd to you, that we ſhall prove the Accuſation contain'd in the Article, and enforce it from the Earl's Anſwer. If your Lordſhips find we have made good our Charge, I ſubmit it to your Lordſhips what Judgment you will paſs upon ſuch "manifeſt and wilful "Violations of the Rights of the Subject."

Far be it from me to add Load to the Guilty; here indeed it is impoſſible. Crimes committed by a Lord Chancellor are capable of no Aggravations; his Station ſufficiently enhances his Guilt. Such Crimes are now become a Parliamentary Enquiry, which the Chancellor's conſcious Heart long ſince preſag'd; and the Commons think they have ſhewn good Reaſon why your Lordſhips ſhould convince the Earl of *Macclesfield* that he flatter'd himſelf with vain Hopes, when he menac'd the Maſters, "That this Enquiry would affect him, but "them much more."

The Commons are ſenſible, that he who has ſo long been a Stranger to Juſtice, will at laſt meet with it here; and that your Lordſhips providential Wiſdom will never ſuffer ſuch Reproaches to be caſt upon this, as have been thrown out upon another Nation. "That a Judge is an Evening Wolf, "that Juſtice ſtandeth afar off, and Equity can-"not enter.

Mr. Serjeant Pengelly. My Lords, We beg leave to call our Witneſſes in ſupport of theſe Articles. We deſire Mr. *Conway* may be call'd.

Mr. Conway *call'd and ſworn.*

Mr. Serj. Pengelly. My Lords, We beg leave that Mr. *Conway* may be ask'd, whether he paid any Money in the Nature of a Contribution, and when? We have the Receipt here (ſhewing it to Mr. *Conway.*)

Mr. Conway. My Lords, This is a Receipt given me by Mr. *Edwards*, *Aug.* 11, 1721. for the Sum of 500 *l.* contributed by me.

He reads the Receipt.

Aug. 11, 1721.

Receiv'd then of Maſter *Edward Conway*, Eſq; the Sum of 500 *l.* voluntarily contributed by him in Aid of the Deficiency of my Predeceſſor *Fleetwood Dormer*, Eſq; in the Caſh of his Office, which I promiſe to repay in caſe the ſame ſhall at any time hereafter be otherwiſe made good.

H. Edwards.

Mr. Serj. Pengelly. We deſire he may be ask'd in what manner he paid it, whether it was out of his own Money or ſtopt out of any other Money paid into Court?

Mr. *Conway.* Soon after, my Lords, I was admitted a Maſter, Mr. *Dormer*'s Deficiency broke out; and the Contribution of the Maſters being then ſpoken of, I was among the reſt applied to, to contribute: I was ſworn in in *January* 1720, and this Receipt is in *Auguſt* 1721, when Mr. *Edwards* came to me to bring me ſome Junior Maſters Money, which he was to deliver to me, out of which he ſtopt this 500 *l.* upon account of the Contribution which I had promis'd to come into.

Mr. Serj. Pengelly. We beg leave that Mr. *Conway* may be askt, whether the 500 *l.* was allowed or deducted at that time out of the Suitors Money?

Mr. Conway. Yes, my Lords, it was ſtopt by him at that time.

Mr. Serj. Pengelly. What Perſuaſions were made uſe of to induce the Maſters to contribute to pay this Money?

Mr. Conway. When the Affair of Mr. *Dormer* came out, what I can remember is, that Letter that came from him from *Holland* was ſent to Mr. *Holford*

ford to be read before the Maſters in the publick Office, and there the Maſters ſpoke of it what they thought proper.

Mr. Serj. Pengelly. What Intimation was there from him, or from any other Perſon, of any Direction from my Lord *Macclesfield* relating to the Payment of this 500 *l.* Contribution?

Mr. Conway. I think my Lord *Macclesfield*'s Secretary was there at the time Mr. *Dormer*'s Letter was read. I think he had ſpoken what he had principally to ſay before I came in, but I think he ſaid the Conſequence might be fatal to the Maſters, if we did not take take care of this Deficiency.

Mr. Serj. Probyn. We would not preſume to interrupt the learned Managers; but I think the particular time when this was done, and the particular Sums that were paid by each Maſter ſhould be ſtated. I remember Mr. *Edwards* was pleas'd to ſay the firſt 500 *l.* that was contributed was paid upon the Day he was ſworn in, which I think was in *May* 1721. We deſire therefore that he would pleaſe to expreſs the Day when every other Sum was paid in.

Mr. Sol. Gen. We only deſire this Gentleman to ſpeak to his own Payment.

Mr. Conway. The Receipt is dated *Auguſt* 11, 1721. Then Mr. *Edwards* ſtopt ſo much Money.

Mr. Serj. Pengelly. We deſire he may be ask'd how he paid that Money, whether voluntarily, or freely, or upon what Ground?

Mr. Com. Serj. I beg Pardon, but I muſt beg leave that the Witneſs may declare at what time this Tranſaction was.

Mr. Conway. It was the Day the Receipt bears Date, the Tranſaction happen'd *Aug.* 11, 1721.

Mr. Sol. Gen. We deſire he may be ask'd what induced him to pay in this Sum?

Mr. Conway. It was ſtopt as a Contribution towards making up Mr. *Dormer*'s Deficiency.

Mr. Serj. Probyn. My Lords, We deſire that this Witneſs may be ask'd, whether there was any preceding Promiſe or Agreement to pay this Money?

Mr. Conway. My Receipt mentions a Promiſe.

Mr. Serj. Probyn. Then I deſire to know how long before this Promiſe was made?

Mr. Conway. Soon after the Deficiency was ſpoken of in Mr. *Dormer*'s Office, in *February* 1720. about three Weeks after I was admitted.

Mr. Edwards called.

Mr. Serj. Pengelly. My Lords, We only call Mr. *Edwards* to aſcertain the time when he received the Money of Mr. *Conway* for his Contribution.

Mr. Edwards. My Lords, According as I have taken it out of my Book, it was the 11th of *Auguſt* 1721.

Mr. Serj. Pengelly. Now, my Lords, we ſhall ſhew the manner how this Payment was made.

Then Mr. Lightboun *was called and appeared.*

Mr. Plummer. I deſire Mr. *Lightboun* may be ask'd if he was ever preſs'd to pay 500 *l.* by whom, and for what?

Mr. Lightboun. Not long after Mr. *Dormer*'s Failure, Mr. *Cottingham*——

Mr. Com. Serj. My Lords, I hope Mr. *Lightboun* ſhall mention the time as he goes along.

Mr. Lightboun. Not long after the Failure of Mr. *Dormer*, I met Mr. *Cottingham* by accident at my Lord Chancellor's Room at *Weſtminſter*, and he ask'd me, whether there had been mentioned to me a Propoſal of paying or advancing 500 *l.* a piece towards making up the Deficiency of Mr. *Dormer*'s Office, for carrying on the Buſineſs there? I ſaid I had heard it; he ſaid it was propoſed that it ſhould be immediately raiſed, that the Buſineſs of the Office might be carryed on, till Mr. *Dormer*'s Effects could be diſpoſed of and ſold; and ſome Intimation was given, that poſſibly we might have our Money again as *Dormer*'s Effects came in. I have heard ſuch a Thing talk'd of, ſays I, but I will never come into it; I thought it attended with dangerous Circumſtances, and a dangerous Precedent, and therefore I was reſolved I would not contribute.

Mr. Plummer. Can you recollect what paſſed afterwards?

Mr. Lightboun. He ſaid all the reſt would. I ſaid I would not, and I continued the ſame Reſolution when I talked with the Maſters about it.

Mr. Plummer. I deſire he may be ask'd if my Lord *Macclesfield* ever preſſed him to pay this Money, and when?

Mr. Lightboun. It was often mention'd to me by the Maſters, why I did not contribute as the others did, and I was made not a little uneaſy for not having done it. I think in the beginning of the Summer 1722, as near as I can remember the time, my Lord Chancellor coming out of Court at his own Houſe, (where I had the Honour to have been ſitting with him) ſaid, Mr. *Lightboun*, I would ſpeak with you. I followed his Lordſhip into his Houſe up into his Study, where my Lord was pleaſed to ſay, *Mr. Lightboun*, I am very ſorry to hear that you have not contributed your 500 *l.* towards making up *Mr. Dormer*'s Deficiency; for, ſays he, it muſt be conſidered, that it will be attended with ill Conſequences, if that Matter is not taken care of. I asked him, was it your Lordſhip's Propoſal? He ſaid it came from the two ſenior Maſters, but he approved of it. I anſwered, that if it had came from your Lordſhip, it might have had a different Conſideration, but as it was theirs, and to ſerve their own Purpoſes, I hop'd his Lordſhip would not inſiſt upon my coming into it. The two ſenior Maſters had been long in their Offices, were grown in Years, and were willing to get out, and ſell at high Prices; one of them had ſlipt out, and the other was about it; that I was but lately come into the Office, and intended to continue in it, and ſaid, I will not concern my ſelf in this Affair, unleſs the Office can be put upon ſuch a Foot that the Suitors may be made ſafe and eaſy.

Mr. Serj. Pengelly. My Lords, I deſire he may be ask'd, whether at this time my Lord *Macclesfield* made uſe of any Reaſons, Arguments or Promiſes towards prevailing upon him to pay this Money?

Mr. Lightboun. I can't ſay my Lord preſs'd me; he left me to my own Inclination, but adviſ'd me to pay it, and not to ſtand out, to do as the reſt did, and not to ſtand alone in it.

Mr. Serj. Pengelly. Whether did he mention of what Conſequence or Advantage it would be to the Maſters?

Mr. Lightboun. His Lordſhip ſaid, if there were not ſome Meaſures taken it might be of ill Conſequence, and that this was the only Expedient he though

thought of. I told his Lordſhip, I thought there were many others, but this was one I would not come into; but that it was not for me to preſume to dictate to his Lordſhip, I thought it did not become me.

Mr. Serj. Pengelly. My Lords, I deſire he may be ask'd, if after theſe Diſcouragements my Lord *Macclesfield* did not again demand Money of him, and when?

Mr. Lightboun. My Lords, In the Year 1724, about the latter end of *July*, I met *Mr. Cottingham* by accident at the Tavern. He came in and deſired me to go into a Room, for he had ſomething to ſay to me. He told me, that my Lord *Macclesfield* had ſent him to tell me, that he wonder'd that I had not paid my 500 *l.*; that there was 1000 *l.* to be paid to *Mrs. Chitty*, or to *Mr. Lockmann*, that muſt be immediately paid; that my Lord had been apply'd to, and much preſs'd, and it muſt be forthwith paid, and he expected that I would advance the 500 *l.* and the reſt of the Maſters 50 *l.* apiece, which would make up the Sum. I ſaid to *Mr. Cottingham*, I cannot think my Lord *Macclesfield* would ſend you on ſuch an Errand to me, I told my Lord formerly I would not pay it, I was with his Lordſhip this Morning, and he ſaid nothing of it, and ſhall have the Honour of waiting upon him in a Day or two, and if he then think fit to talk to me about it, I ſhall give him a proper Anſwer; but I don't care to ſend my Meſſage to him by you, becauſe Meſſages are liable to be miſtaken and miſrepreſented, and I will give my Anſwer my ſelf. Upon that *Mr. Cottingham* began to be angry at my diſtruſting him, and thinking that he came of his own Accord, and averr'd to me that he came with my Lord Chancellor's Privity. I repeated the ſame Anſwer again to him, that I would give my own Anſwer to his Lordſhip, and would return none by him. In a Day or two after there was an Intimation given that my Lord Chancellor expected all the Maſters to attend him at ſix a Clock in the Evening: We imagined that it was a Call upon the other Maſters for more Money, and for my five hundred Pounds. They had all declared to me they would never contribute any thing more, and therefore I deſired them that in caſe that were the Buſineſs, they would freely declare their Thoughts before my Lord himſelf. I believe it was the ſenior Maſter I preſſed to do it, ſaying to him, it beſt becomes you to give the Anſwer; ſays he, if the Queſtion be put, I ſhall propoſe that we may have time to conſider of it. I deſired he would not do that, it would encourage my Lord, and he might think that if he importuned it further we would comply, and for my part I am determined not to do it; ſo we went on to my Lord, and were carried up Stairs; when we came there, my Lord ſaid, there hath been an Application made to me on the behalf of *Mrs. Chitty* or *Mr. Lockmann*, I think he was the Perſon expreſly named, and that he had been much preſſed by Perſons of Diſtinction; and then he turned to me, and ſaid, Mr. *Lightboun*, I am extremely ſurprized you have not paid the 500 *l.* as the reſt have done. After he had us'd a good many Perſuaſions and Arguments, I told his Lordſhip it was with great Concern that I refus'd to do any thing that his Lordſhip could deſire of me; but this was a Thing of ſuch a dangerous Conſequence, that I would not contribute one Farthing, and that I had given his Lordſhip my Reaſons before; if he would hear them again, I would repeat them again; but this one was of moſt Weight with me, that it might be a Precedent, and look'd upon as an Undertaking for one another, if ever there ſhould be a national Inquiry into theſe Matters; and that I would be anſwerable only for my own Debts: That as I had not contributed towards the Misfortunes of others, I would not contribute towards Payment of their Debts; that I did not know but the paying Contributions to make good the Demands on other Offices might make Deficiencies in our own; I had always refus'd it, and never repented it, and I had the pleaſure of hearing every Maſter repent the doing it. I called upon the reſt of the Maſters to deal ingenuouſly with my Lord, to tell him what they had ſaid when they had talk'd over the Matter among themſelves, that they would not contribute any more; upon that *Mr. Holford* got up and ſaid, he would never do it. Then my Lord ſaid, he either would pay it himſelf, or take care it ſhould be paid.

Mr. Plummer. I deſire he may be ask'd if my Lord *Macclesfield* uſed any Inſinuations with reſpect to the Parliament?

Mr. Lightboun. I forgot that my Lord *Macclesfield* was pleas'd to ſay, that the Conſequences of not contributing to raiſe a Sum of Money to pay the Debt of *Mr. Dormer*, might be that the Money and Securities would be taken out of our Hands. I told him I was ready to deliver both the Money and Securities the next Day if his Lordſhip made the proper Orders, and I was properly indemnified. I think his Lordſhip ſaid further, this may produce a Parliamentary Enquiry, and ſhould it be reſolved that purchaſing a Maſter's Place is contrary to the Statute of the fifth and ſixth of *Edward* VI. you might loſe your Places; to that I replied, I would quit my Office rather than hold it upon thoſe Terms of paying other Maſters Debts. He went on further about a Parliamentary Inquiry; I ſaid, let the Conſequence be what it will, I would not pay it. Then I called upon the other Maſters, who ſaid they would not pay it.

Mr. Serj. Probyn. My Lords, As to the paying of the 1000 *l.* to *Mrs. Chitty* or *Mr. Lockmann*, I deſire *Mr. Lightboun* may be ask'd whether the late Lord Chancellor was pleaſed to ſay that he had or would take Care to pay the 1000 *l.* himſelf, or what the particular Expreſſion was that he then made uſe of, that he had taken Care or would take Care?

Mr. Lightboun. I can't remember at this diſtance of time, whether he ſaid he had, or would take Care to pay it. There is ſo little Difference, that I cannot ſay which. I do not pretend to ſay thoſe were the very Expreſſions my Lord uſed to me, or I to him. I ſpeak as to the Tenor or Purport of our Converſation, I would neither aggravate nor ſoften Matters.

Mr. Serj. *Pengelly*. The next Witneſs we call is Mr. *Holford*, who was preſent at this Converſation.

Mr. *Holford* ſworn.

Mr. Serj. *Pengelly*. We deſire Mr. *Holford* may be asked, whether he was preſent at this Time, as is mentioned, when the Maſters were required by the Earl of *Macclesfield* to raiſe this 1000 *l.* for Mrs. *Chitty* or Mr. *Lockmann*.

Mr. *Holford*. My Lords, I was preſent at that Meeting. It was deſir'd, as I apprehended, by my Lord *Macclesfield*, for us to attend him at Six o' Clock. When we came up there, I think, the firſt thing that my Lord *Macclesfield* ſaid was, he asked Mr. *Lightboun* why he would not pay his 500 *l.* as others had done. Mr. *Lightboun* did give this Anſwer: That he had told him ſeveral Times before, that he would not do it; he had given his Reaſons, and it was in vain to repeat thoſe Reaſons again, he was of the ſame Mind ſtill. My Lord then ſpoke of a Demand there was of 1000 *l.* on Mr. *Dormer's* Office for one Mrs. *Chitty* and Mr. *Lockmann*, and I apprehended, my Lord mentioned it as if he intended that the Maſters ſhould contribute towards making it up; but he after ſaid he would take Care of it. After that my Lord did not mention the 1000 *l.* but, in general, ſpoke of the Deficiency in Mr. *Dormer's* Office, and it ought to be made up; and he propoſed, as I did apprehend, that the Maſters ſhould make it up. Mr. *Lightboun* did call upon me to declare; upon that I told my Lord, it was very unadviſeable to contribute towards a Deficiency which no Body knew what it was; and the doing ſo would only be ruining one's ſelf, for fear of being undone; and, for my Part, I was unwilling to do it; any Body elſe might do as they thought fit.

Mr. *Plummer*. In what Manner did my Lord addreſs himſelf to Mr. *Lightboun*, did he do it in gentle Terms, or how?

Mr. *Holford*. He ſpoke pretty ſharply to him.

Mr. Serj. *Pengelly*. What was ſaid by the Earl of *Macclesfield*, to perſuade the Maſters to come into this Contribution?

Mr. *Holford*. My Lord ſaid it was a grievous thing, there had not been that due Care taken there ought to have been; that thoſe who came firſt had all their Money, and thoſe that came after would have none; which would make a great Clamour upon the Maſters.

Mr. Serj. *Pengelly*. What was ſaid upon that?

Mr. *Holford*. I don't remember what in particular.

Mr. Serj. *Pengelly*. What was ſaid, as to a Parliamentary Enquiry?

Mr. *Holford*. I remember my Lord did ſay, it might perhaps occaſion a Parliamentary Enquiry. Suppoſe, ſaid he, the Parliament ſhould reſolve, that the Office of a Maſter in Chancery is a Place relating to the Execution of Juſtice, and reſolve that every Body that hath purchaſed thoſe Offices is within the Statute of the 5th and 6th of *Edward* VI. It may affect me in ſome Degree, in the Loſs of the Diſpoſition of the Offices; but it will affect you in the Loſs of the Places themſelves.

Mr. Serj. *Pengelly*. Whether any Perſon then ask'd my Lord, in what Manner it might come before the Parliament?

Mr. *Holford*. I ask'd my Lord myſelf, and ſaid it would be a Favour if he would give us his Opinion, in what Manner it might come before the Parliament, and in what Way. He ſaid, it might come in by the Committee for Courts of Juſtice, appointed by the Houſe of Commons at the Beginnning of every Seſſion. But when I came out of the Room, I ſaid, it was more likely to come by Way of Complaint than that Way.

Mr. Serj. *Pengelly*. I deſire he may be asked, whether, at this Time, the Maſters agreed to come to a Contribution to pay this 1000 *l.* and what was ſaid about it.

Mr. *Holford*. It was diſagreed to; and when it was ſo, my Lord did ſay, that he himſelf would pay the 1000 *l.*

Mr. Serj. *Pengelly*. We leave that as a Circumſtance of my Lord's endeavouring to prevent a Parliamentary Enquiry.

Mr. Serj. *Probyn*. My Lords, we deſire Mr. *Holford* may be asked, whether he can be poſitive as to the Time of this Meeting?

Mr. *Holford*. I believe it was in *July*, or *Auguſt*, 1724.

Mr. Serj. *Probyn*. You can't be poſitive?

Mr. *Holford*. No, I can't be poſitive.

Mr. Serj. *Probyn*. Whether there was, at that Time, any Propoſal made to raiſe Money, by any annual Sum or Payment out of the Offices, towards paying the Deficiencies by degrees.

Mr. *Holford*. I do not remember any ſuch thing.

Mr. Serj. *Probyn*. Was ſuch Propoſal made at any other Time.

Mr. *Holford*. I don't remember that it was ever propoſed by my Lord. I have heard Talk among the Maſters of a great many Schemes and Propoſals; but they never did agree in any one thing.

Mr. Serj. *Probyn*. I deſire he may refreſh his Memory, and that he may inform your Lordſhips if there was not a Propoſal made, that if they might be maintain'd in their Offices, as they then were, they would not then conſent that a Contribution ſhould be rais'd among the Maſters.

Mr. *Holford*. No, I don't remember that; I believe it was mentioned, that ſuppoſing the Maſters might be continued on the Foot they were, whether they would not think it worth their while to do it. I ſaid it was a Matter fit to be conſidered, and I did not know but it might; but there was no Method propoſed but what ſeemed difficult; and I don't remember that any thing was agreed to.

Mr. *Strange*. I deſire he may be ask'd, whether, after they had contributed the 500 *l.* a piece, their Accompts were called for by my Lord *Macclesfield*, in the Manner they were called for before?

Mr. *Holford*. I don't know but they might. The Manner of calling for thoſe Accompts was thus: There was a Writing left in the publick Office, in which there were a great many *Items* in what Method thoſe Accompts ſhould be brought in. I had prepared mine, and waited till they ſhould be called for; but they were not called for, nor demanded; ſo I laid mine by.

Mr. *Com. Serj*. I deſire he may be ask'd, whether this Diſcourſe, in relation to the raiſing of Money, was to pay off the whole Deficiency, or confin'd to pay off this Demand of 1000 *l.*

Mr. *Holford*. I don't remember any Propoſal, but only a Diſcourſe that was ſtarted. I did not apprehend the whole Deficiency was intended to

be paid; for I never knew any Body that could tell what the whole Deficiency was, 'till of late.

Mr. *Com. Serj.* I desire to know, whether he speaks this from his Memory?

Mr. *Holford.* I can speak from nothing but my Memory.

Mr. *Com. Serj.* I desire that he will inform your Lordships, whether he doth not remember, that in *November* last there was a Signification to the Masters, and to him in particular, to bring in their Accompts?

Mr. *Holford* Yes, my Lord.

Mr. *Com. Serj.* If there was such an Intimation in *November* last, to deliver in their Accompts, how comes it that you say you have them by you still?

Mr. *Holford.* This is a Mistake; you misapprehend me. The Accompt, that I mentioned before, was what was immediately called for, after the Failure of Mr. *Dormer*; but the Accompt in *November* last was what was called for by the Judges, and delivered into the Council.

E. of *Macclesfield.* My Lords, I desire to know, whether Mr. *Holford* can remember what the particular Directions, as to those Accompts, were, and whether the Accompts he prepared were drawn up according to those Directions?

Mr. *Holford.* Those Directions were many; in in drawing up my Accompt, I did not draw it up exactly according to those Directions; but I drew them up to shew the Balance of Cash and Securities in my Hands.

E. *Macclesfield.* I would desire to know, whether they were not the like Directions as in *November* last, and whether the Masters did not think it impracticable to draw it up accordingly?

Mr. *Holford.* Yes, my Lords, they did; they thought it difficult, I thought it was not practicable without a great deal of Trouble.

Sir *George Oxenden.* I desire to know, whether it was required by my Lord Chancellor to look into *Dormer*'s Deficiency, to see what the true State of it was at that Time?

Mr. *Holford.* All I heard of it was: I heard that my Lord had ordered Mr. *Edwards* to deliver in an Accompt of Mr. *Dormer*'s Office to me and Mr. *Bennet:* He did deliver one; but it was an Accompt done in Haste, and did not shew what the Deficiency was. For some of the Payments said to be made, no proper Vouchers were produced; there were Mistakes, and it was not a proper Accompt; and without examining it we could not depend on it.

Mr. Serj. *Pengelly.* He mentions, that at this Meeting it was said, supposing the Masters might be continued on the same Foot they then stood, *&c.* I desire Mr. *Holford* may explain what he meant by the Foot they then stood on; what Liberties and Privileges were meant by that Expression?

Mr. *Holford.* I understood it was their continuing in the Possession of the Money.

Mr. Serj. *Pengelly.* Whether that was to lock the Money up in a Cabinet, or to have Power of the Money to make use of it?

Mr. *Holford.* For my own Part, I should not have lock'd it up.

Mr. *Lutwyche.* I would beg Leave to ask him, as he hath mentioned the Calling for the Accompts, whether he delivered any Accompt to the Earl of *Macclesfield*, till the Order made by the Council?

Mr. *Holford.* My Lords, I did deliver an Accompt to my Lord *Macclesfield*, or to Mr. *Cottingham*, of my Money, but not of the Securities.

Mr. Serj. *Pengelly.* We desire Mr. *Edwards* may be called again.

[*Accordingly Mr.* Edwards *was called and appeared.*

Mr. Serj. *Pengelly.* My Lords, we beg Leave that Mr. *Edwards* may give your Lordships an Account; because he was immediately concerned in a Demand made upon this Office, what Application was made to him for this Mrs. *Chitty*'s Money; and what Application he made to the Earl of *Macclesfield* on that Occasion.

Mr. *Edwards.* My Lords, there was an Order brought to me, that was made by my Lord *Macclesfield*, for the Payment of 1000 *l.* to Mrs. *Chitty.* I told the Party, I had not Money in my Hands of Mr. *Dormer*'s, sufficient to answer the Demand upon the Office. I then went to my Lord *Macclesfield.* I told him (I had been forced to trouble him pretty often upon that Occasion) that it gave me a great deal of Uneasiness, that there was no Fund in my Hands to answer those Demands that were upon my Office. I hoped his Lordship would take Care that there should be a Supply, or that he would not be pleased to make Orders upon me for Payment of Money.

Mr. Serj. *Pengelly.* Give an Account of the Whole that passed, the whole Conversation.

Mr. *Edwards.* My Lord *Macclesfield*, in answer to that said, at least, it was what I understood by his Answer, that, if the People would but have a little Patience, he was doing every thing necessary, and making proper Regulations for that Purpose.

Mr. Serj. *Pengelly.* I desire he may be ask'd, whether my Lord *Macclesfield*, at that Time, directed him to proceed to make any further Payments, or encouraged him to go on to make Payments?

Mr. Serj. *Probyn.* My Lords, we apprehend that is too leading a Question.

Mr. Serj. *Pengelly.* What Directions he had, in general.

Mr. *Edwards.* My Lords, I had no other Directions that I remember.

Mr. Serj. *Pengelly.* I desire he may acquaint your Lordships, whether he said any thing relating to the State and Condition of the Suitors of the Court?

Mr. *Edwards.* Several Times that I had the Honour to wait on my Lord *Macclesfield*, I told him there was like to be a great Deficiency in Mr. *Dormer*'s Effects: All that had been raised out of *Dormer*'s Effects was exhausted and gone, and there were a great many Demands; and I hoped Provision would be made to answer them: It was for me to do it else; and I hoped it was not expected that I should.

Mr. Serj. *Pengelly.* Was any thing represented at that Time, concerning paying some of the Suitors of the Court, and not others?

Mr. *Edwards.* About that Time, or rather since, as I remember, I told my Lord *Macclesfield* that I saw the Masters were determined not to make any further Contributions; and if that were to be the Case, and there was to be no further Supply of Money, it would be very hard for some to have

all

all their Money, and others none at all. My Lord Chancellor ſaid, I do not know what to ſay to it, I think it is very hard it ſhould be ſo ; I will take all the Care I can, and hope to make every Body eaſy.

Mr. *Lutwyche*. My Lords, I deſire he may be asked, whether he had not paid all the Money, or near all, when this Diſcourſe happened?

Mr. *Edwards*. Yes, My Lords.

Mr. *Lutwyche*. I deſire he may be asked, whether he was preſent at the Meeting of the Maſters, when this 1000 *l.* was inſiſted upon, and on what Occaſion it was?

Mr. *Edwards*. It was upon a Summons that all the Maſters ſhould attend his Lordſhip ; I am not ſure, as to the Day ; I think it was the latter End of *July*: We waited upon his Lordſhip about ſix of the Clock in the Evening, and my Lord mentioned it to Mr. *Lightboun*, that he was ſurprized that he had not contributed his 500 *l.* he wonder'd that he ſhould be ſo backward in doing what others thought right to do, and that there was Occaſion at that Time for the Payment of 1000 *l.* he mentioned, either to Mrs. *Chitty* or Mr. *Lockmann*. Mr. *Lightboun* told him, that he did not expect to be asked again upon this Subject, he had ſo often told his Lordſhip he would not contribute ; other People might do what they pleaſed, but, as for his Part, he was determined not to do it.

Mr. *Lutwyche*. We deſire to know what paſſed, and what was ſaid by the Earl, at that Meeting?

Mr. *Edwards*. When this was refuſed by Mr. *Lightboun*, there was a Diſcourſe in the Company, that if the reſt of the Maſters would advance 50 *l.* a piece, and Mr. *Lightboun* his 500 *l.* it would make up the Sum. The Maſters, moſt of them, ſpoke their Mind, and ſhewed an Unwillingneſs to contribute any more. My Lord *Macclesfield* was pleaſed to ſay, this is a Thing of Conſequence, a Matter that ought to be conſidered ; here is a very preſſing Occaſion for a Sum of Money to be immediately paid, if not paid, I don't know what the Conſequence may be ; Clamours begin to grow pretty ſtrong, I don't know but it may occaſion a Parliamentary Enquiry ; or to that Effect.

Mr. *Lutwyche*. I deſire he may be ask'd, whether there was any further Diſcourſe what the Parliament might do?

Mr. *Edwards*. My Lord *Macclesfield* was pleaſed to ſay further, I don't know, if this Matter comes into the Conſideration of Parliament, how far it may affect your Offices, the Sale of them is againſt an Act of Parliament : Suppoſe it ſhould be reſolved by the Houſe, that theſe Places, being bought contrary to the Act of Parliament, are forfeited, I can't ſay how far it may affect me in ſome Meaſure, but it will affect you much more.

Mr. Serj. *Pengelly*. Theſe are the very Words of the Article, and we may rely upon the Opinion of of the Earl himſelf, when he was in the Poſſeſſion of that great Office?

E. of *Macclesfield*. My Lords, I deſire Mr. *Edwards* may be asked, whether the Subject Matter of this Diſcourſe was the Payment of this 1000 *l.* or making good the Whole of *Dormer's* Deficiency?

Mr. *Edwards*. I underſtood the only Subject to be this 1000 *l.*

E. of *Macclesfield*. You underſtood it ſo?

Mr. *Edwards*. And the Reaſon why I undergoon it ſo was, becauſe if Mr. *Lightboun* would have been pleaſed to have paid his 500 *l.* and the other Maſters 50 *l.* a piece, it would have made up the Sum.

E. of *Macclesfield*. Was the Propoſal of paying 50 *l.* a piece, after Mr. *Lightboun* had refuſed the Payment of 500 *l*?

Mr. *Edwards*. I believe it was.

E. of *Macclesfield*. What Occaſion was there for the Propoſal to pay 50 *l.* a piece, when the Payment of 500 *l.* was abſolutely refuſed?

Mr. *Edwards*. I believe it was underſtood by ſeveral, that, if the other Maſters would have contributed 50 *l.* a piece, it would have been an Inducement for Mr. *Lightboun* to have come in and paid his 500 *l.*

E. of *Macclesfield*. Some Body muſt propoſe this that had that Apprehenſion?

Mr. *Edwards*. I can't ſay who propoſed it, nor whether it was propoſed by my Lord *Macclesfield*, but 50 *l.* a piece was mentioned.

E. of *Macclesfield*. My Lords, I deſire to know of Mr. *Edwards*, whether the Maſters did not at any Time agree to make good *Dormer's* Deficiency?

Mr. *Edwards*. My Lords, I think I remember a Meeting of the Maſters at your Lordſhip's Houſe, not long before this, where they ſeemed inclinable to agree, that if they were continued in the Rights of their Office in all Reſpects, and on the ſame Foot as they had enjoyed them, that then they would have endeavoured to have made this Deficiency good.

E. of *Macclesfield*. I deſire to know if he hath not ſaid, that on his coming into the Office, the Maſters told him, they would make good the Deficiency?

Mr. *Edwards*. I can't ſay the Maſters ever told me, they would make good the Deficiency ; I can't ſay I ever heard them ſay, that they would make it up.

E. of *Macclesfield*. I deſire you would recollect yourſelf, whether, when you was with me, and I deſired you to give an Account of this Matter, you did not ſay, that the Maſters did promiſe to make it good, or elſe you would not have come into the Office?

Mr. *Edwards*. I don't remember I told your Lordſhip ſo ; I believe it was deſigned by the Maſters to have it made up, if not the Whole, the greateſt Part of the Maſters, were inclinable to make up the Deficiency.

E. of *Macclesfield*. I deſire an Anſwer to the Queſtion, whether he did not ſay, that the Maſters did promiſe him to make good the Deficiency?

Mr. *Edwards*. I don't remember that I ſaid ſo directly ; I told your Lordſhip, that unleſs I had had Aſſurances, that the Deficiency of the Office would have been made up, I never would have meddled with it. Theſe Aſſurances I had from Mr. *Cottingham* and Mr. *Godfrey*.

E. of *Macclesfield*. I think you ſay, the Maſters did ſeem to agree, that if they were kept in Poſſeſſion of the Rights of their Offices, they would contribute. Had you two Meetings with me in *July*, or *Auguſt*?

Mr. *Edwards*.

Mr. *Edwards*. I think there were two in the ſame Month of *July*: Within a Month the two Meetings were.

E. of *Macclesfield*. Whether the Maſters have not made ſeveral Complaints to me, of the Invaſion of their Right in their Offices, and deſired me to make an Order to redreſs them?

Mr. *Edwards*. Not only Complaints of that Sort were made, but I believe thoſe Complaints were reduced into Writing, and laid before your Lordſhip; there were frequent Complaints by Concurrence of all the Maſters.

E. of *Macclesfield*. How long before that Time were Complaints made to me, of the Maſters being injured in the Profits of their Office?

Mr. *Edwards*. I believe near a Twelvemonth.

E. of *Macclesfield*. Was it not more?

Mr. *Edwards*. It was full a Year.

[*Earl of* Macclesfield *ſhews Mr.* Edwards *a Paper.*

Mr. *Edwards*. This is what I mentioned, a Repreſentation in Writing laid before your Lordſhip.

E. of *Macclesfield*. Pray look upon that.

[*Shews another Paper, which Mr* Edwards *looks upon.*

E. of *Macclesfield*. Are thoſe two Papers ſigned by you, and the other Maſters whoſe Names are at the End of them?

Mr. *Edwards*. Yes.

E. of *Macclesfield*. I deſire to know in the next Place, whether I was not much preſſed by the Maſters to have made ſome Alterations in the Proceedings of the Court? And what Anſwer did I give?

Mr. *Edwards*. Upon this Repreſentation there were a great many Applications made to my Lord *Macclesfield*. I went ſeveral Times myſelf. Sometimes two or three would make Application to him, that he would be pleaſed, if he thought the Matters repreſented to be Grievances, that he would redreſs them. My Lord did ſay, that he thought, that the Matter of our Complaint was juſt, and that thoſe Matters were proper to be rectified, and he would take all proper Meaſures to do it.

E. of *Macclesfield*. And why were not all theſe Things ſet right?

Mr. *Edwards*. I remember one Circumſtance that I believe will be an Anſwer to the Noble Lord's Queſtion. Thoſe Matters were not laid together all at once before my Lord Chancellor, but ſome at one Time, and others at another Time; and my Lord *Macclesfield* did ſay, I would have you draw up a State of all theſe Grievances you complain of, and then I ſhall ſee them better under one View, and take them together.

E. of *Macclesfield*. Was there any Order made in Favour of the Maſters, and to redreſs theſe Grievances?

Mr. *Edwards*. I remember we were a little impatient that there was no Order made; we often ſollicited on ſeveral Accounts before they were made.

E. of *Macclesfield*. For what particular Reaſons were you ſo impatient?

Mr. *Edwards*. It is impoſſible to recollect the particular Reaſons; they were, in many Inſtances, relating to the Proceedings at the Rolls, and the Innovations there to the Prejudice of the Maſters Offices.

Mr. *Plummer*. My Lord *Macclesfield* hath asked ſeveral Queſtions, and I would make an Obſervation upon this Evidence, That theſe Gentlemen applied to Lord *Macclesfield* to redreſs Grievances, but he would not promiſe them a Redreſs till they paid this Debt.

Sir *George Oxenden*. I deſire to know what he means by the Profits of the Office?

Mr. *Edwards*. The principal Thing that I mean is, the keeping of the Money; but there were ſeveral other Things in which we thought our Offices leſſened, by taking away the cuſtomary Fees which uſually belonged to the Maſters.

Sir *George Oxenden*. If the Profits of the Office was the keeping of the Money, I ſuppoſe they made uſe of it?

Mr. *Edwards*. Yes, my Lords, I believe it was not underſtood by any Body, that the Money was deſigned to be locked up. By the Profits of the Money is meant the putting out the Money at Intereſt for ourſelves. But that is not all, the placing the ſame out at Intereſt for the Suitors occaſions ſeveral Perquiſites, as Reports and other Things, which would be loſt by taking away the Money.

Mr. *John Bennet* called again.

Mr. *Sol. Gen*. My Lords, we deſire Mr. *John Bennet* may be asked, whether he was preſent at the Meeting at the Lord Chancellor's, when Propoſals were made for the raiſing this 1000 *l.*

Mr. *Bennet*. My Lords, I was there, and my Lord *Macclesfield* was earneſt in perſuading Mr. *Lightboun* to pay his 500 *l.* Mr. *Lightboun* ſaid he had much rather bring in all the Money and Securities he had in his Hands, and deliver them up, than pay this 500 *l.* Upon which my Lord *Macclesfield* ſaid, delivering up the Money and Securities too might be the Conſequence, but that was not the worſt; there might be Votes of the Houſe of Commons, that the Office of a Maſter in Chancery did concern the Execution of Juſtice, and that the Maſters in Chancery, by purchaſing their Offices, had incurred the Penalty of the Statute of *Edward* the VIth, and thereby forfeited their Places, and that a new Set of Maſters might be put in; it might redound to ſome Loſs to his Lordſhip in diſpoſing of thoſe Offices, but it would redound much more to their Loſs, the Loſs of their Places.

Mr. *Lutwyche*. When the Maſters refuſed to contribute to this of *Chitty*, what ſaid my Lord?

Mr. *Bennet*. My Lord ſaid, he would take Care of it himſelf, or that he would pay it himſelf, I can't ſay which.

Mr. *Lutwyche*. Whether any thing was ſaid concerning the Conſequence of not paying this 1000 *l.* and whether any Mention was made of *Dormer*'s Deficiency?

Mr. *Bennet*. There was Mention made of Mr. *Dormer*'s Deficiency, and one Maſter mentioned, that it was a bottomleſs Pit; and as my Lord had deſired me and Mr. *Holford* to take ſome Account of it, we both declared, we had not received ſuch a ſatisfactory Account from Mr. *Edwards*, as could be depended upon, and that the Deficiency appeared to us to be very uncertain.

Mr. *Lut-*

Mr. *Lutwyche.* I desire he may be asked, whether any mention was made of any Fear of the Discovery of that Deficiency?

Mr. *Bennet.* I can't say by whom it was said, but it was said in Discourse, If this 1000 *l.* was not now paid, the Deficiency of Mr. *Dormer*'s Office would be discovered.

Mr. *Lutwyche.* Pray recollect who was that said by?

Mr. *Bennet.* I can't take upon me to say whom it was said by, but it was said in the Conversation that passed at that Time.

Mr. *Lutwyche.* Who were then present?

Mr. *Bennet.* I believe, all the Masters.

Mr *Lutwyche.* And who besides?

Mr. *Bennet.* My Lord *Macclesfield.*

Mr. *Lutwyche.* Were not all the Masters against making up the Deficiency?

Mr. *Bennet.* Yes, all of them.

E. of *Macclesfield.* Was *Dormer*'s Deficiency then known?

Mr. *Bennet.* It was known abroad, but it was not known how much.

E. of *Macclesfield.* Were there two Meetings between me and the Masters in *July*, or the Beginning of *August*?

Mr. *Bennet.* I believe within a Month there were two Meetings.

E. of *Macclesfield.* What was the Subject Matter of the other Meeting?

Mr. *Bennet.* The first Meeting was to put us all in mind of our Duty, and to admonish us to avoid any Complaint?

E. of *Macclesfield.* That was the first Meeting. Was there any thing said about *Dormer*'s Deficiency?

Mr. *Bennet.* I don't remember there was.

E. of *Macclesfield.* What Admonition was it that was given to the Masters, and what was said to them, if they did fail in their Duty?

Mr. *Bennet.* The Admonition was generally to take Care to perform our Duty, not to give any Cause of Complaint, and, in particular, not to go out of Town, till a Week after the last Seal.

E. of *Macclesfield.* Do you not remember, that I said in my Admonition, that, if any Master failed in his Duty, I owed it to the rest to punish him, and to make him an Example?

Mr. *Bennet.* I believe you did say so.

Mr. *Lutwyche.* At the Time when this Admonition was given, was any thing then said about your Accompts?

Mr. *Bennet.* No, I don't remember that any thing was then said on that Subject.

E. of *Macclesfield.* In Point of Regularity, when these Gentlemen speak of this 1000 *l.* they should produce the Order?

Mr. Serj. *Pengelly.* It is here, and it is admitted in the Answer.

[*The Order produced, proved by Mr.* Ralph Paxton, *who swore it to be a true Copy of the Order taken from the Report-Office.*

Mr. *Paxton* begins to read,

Martis decimo septimo Die Martii Anno Regni Georgii Regis decimo, inter Prideaux Sutton Cler. & Annam Uxorem ejus, Mercy Sheldon Spinster & Egidium Laurence Executor. Winifred Sheldon Spinster Defunct. Quer. Elisam Chitty, Johannem Russel & alios Defendentes.

Whereas the Defendant, *Elizabeth Chitty* ——

E. of *Macclesfield.* It is not necessary to trouble my Lords in hearing the whole Order, only the ordering Part?

Mr. *Paxton* reads again,

His Lordship doth order, that the said Master do, out of the said Money in his Hands, pay unto the Defendant Eliz. Chitty *the Sum of one Thousand Pounds, and to the Plaintiffs the Sum of five Hundred Pounds, subject to the further Order of this Court.*

Mr. *Lovibond* sworn.

Mr. *Lutwyche.* My Lords, we desire that Mr. *Lovibond* may be asked, whether he was at the Meeting, when the Masters attended my Lord *Macclesfield* about *July* last, and what passed at that Meeting?

Mr. *Lovibond.* I was at that Meeting with several of the other Masters, I think most of them: As to what passed then, according to the best of my Recollection, the first Thing was, my Lord *Macclesfield* turned to Mr. *Lightboun* and ask'd him, why he had not paid the 500 *l.* as well as the rest of the Masters; to which he replied, he never would, and gave my Lord some Reasons why he would not. Then my Lord *Macclesfield* was pleased to say, there was a Matter that required Expedition, a further Demand was made of a Sum of Money, by one Mr. *Lockmann*, who belonged to to the Prince's Court, and it did behove us to find out some Way to make him easy. He proposed that the Masters should raise that Money among them. The Masters in general said, that they could not do it.

Mr. *Lutwyche.* What Arguments were made use of by my Lord *Macclesfield*, to persuade them to it?

Mr. *Lovibond.* I remember that Mr. *Lighboun* said, rather than pay it, he would deliver up all the Money and Effects in his Hands, and my Lord *Macclesfield* did reply, Perhaps that is not the worst of the Matter, it may be worse than that; suppose there should be a Parliamentary Enquiry, and the Parliament should come to a Resolution, that you have forfeited your Offices, by having bought them against the Statute of *Edward* the VIth.

Mr. *Lutwyche.* I desire he may be asked, whether any Encouragement was given, in case they would pay this Money?

Mr. *Lovibond.* I don't remember there was any thing spoke by way of Encouragement to the Masters, for Payment of that Sum of Money.

Mr. *Lutwyche.* I desire to know what was the Result of this Matter, as to this Sum of Money being to be paid, and who it was that said it should be paid?

Mr. *Lovibond.* Upon the Refusal of the Masters, my Lord *Macclesfield* said, Well, I will take Care of that Part myself.

Mr. *Lutwyche.* I desire he may be asked, whether any thing was then said in relation to the Deficiency of *Dormer*'s Office?

Mr. *Lovibond.* Yes, there was some Discourse about that Matter, and my Lord *Macclesfield* did express himself as though it would be an unlucky

Thing, and it muſt be made up one Way or other, and he deſired the Maſters to think of a Way to make it up. My Lord *Macclesfield* ſaid, if you can have the Enjoyment of your Places, as you have had them theſe Forty Years, will you come into ſome Terms to make up that Debt? Some ſaid they could not come into it; ſome ſaid there be a might Means of paying it by Annual Inſtallments out of their ſeveral Offices; ſome ſeemed to agree to it; others ſaid we may as well make good the Bankers Debts, as make good this Debt.

E. of *Macclesfield.* I deſire he may be asked, whether he did not agree, that this Deficiency ſhould be made good by Annual Payments?

Mr. *Lovibond.* No, I did not.

E. of *Macclesfield.* I deſire to know, whether the reſt of the Maſters did not?

Mr. *Lovibond.* I believe ſome of the Maſters did.

E. of *Macclesfield.* I deſire to know, whether they did all agree?

Mr. *Lovibond.* I believe the major Part did. I did not.

E. of *Macclesfield.* Do you believe any beſides yourſelf diſagreed?

Mr. *Lovibond.* Indeed I can't tell. The greateſt Part did agree. I can't ſay I heard any Body refuſe.

E. of *Macclesfield.* Some, he ſays, did agree to it, the major Part, and none that he heard refuſed. I deſire to know, if it was not endeavoured to find out a Way to make up whatever Deficiency there was; and whether this was the Subject Matter, the making good the 1000 *l.* or the Whole of the Debt?

Mr. *Lovibond.* The making good the Whole of the Debt, as I underſtood it.

E. of *Macclesfield.* I think he ſaid, that I ſaid then, I would take Care of the 1080 *l.* whether was that after they had agreed that the Deficiency ſhould be made good, or before?

Mr. *Lovibond.* No, I think it was before.

Mr. *Plummer.* I deſire to know, if my Lord *Macclesfield* did ſay, he would take Care of it, when the Maſters refuſed to contribute?

Mr. *Lovibond.* To the beſt of my Remembrance, it was upon their Refuſal, that he ſaid ſo.

Mr. *Thomas Bennet* called again.

Mr. *Tho. Bennet.* My Lords, before the Managers propoſe a Queſtion, I beg the Favour to mention a Thing that my Memory ſlipp'd me in Yeſterday. My Lord *Macclesfield* then asked me, what Eſtate I had purchaſed? I ſaid 68 *l.* a Year in *Kent*, and 40 *l. per Annum* in *Suffolk*. I forgot a Houſe I bought for 700 *l.* which is mortgaged for the ſame Sum. The Accompt lies upon the Table, I forgot it then, and I did then refer to my Accompt that lies upon the Table, that I might not be miſtaken.

Mr. *Sol. Gen.* I deſire he may be asked, whether he was preſent at this Meeting at my Lord *Macclesfield*'s.

Mr. *Tho. Bennet.* Yes, I was ſummoned to attend my Lord *Macclesfield* on this Occaſion. I dined that Day with my Brother and Mr. *Lovibond* and one more; and my Brother told me, that there was a Propoſal come from my Lord *Macclesfield* by Mr. *Cottingham.* He ſaid it was, that the Maſters ſhould advance 50 *l.* a piece, towards a Demand in the Court of *Chancery*; and in caſe we would do it, my Lord *Macclesfield* would make Mr. *Lightboun* pay his 500 *l.* We, who were then preſent, ſeemed to agree, that if my Lord would make Mr. *Lightboun* pay his 500 *l.* we would pay our 50 *l.* a piece. In the Evening, when we attended my Lord *Macclesfield*, his firſt Application was to Mr. *Lightboun*, and as ſoon as we came, he ſaid to him, Mr. *Lightboun*, I am ſurprized you have not paid your 500 *l.* as the reſt have done, I wonder at it; and he uſed ſome hard Expreſſions, that I wonder he could ſtand it, I could hardly have done it; but Mr. *Lightboun* did ſtand it, and refuſed to pay it, and gave his Reaſons for it, and ſaid he had given them over and over again.

Mr. *Sol. Gen.* What Reaſons were laid before you to pay it?

Mr. *Tho. Bennet.* The Reaſons laid before us by my Lord *Macclesfield* were, that there was a Deficiency in *Dormer*'s Office, which he was afraid would break out; for here was a Demand of a Sum of Money by one, for whom he had been ſpoken to, by a Perſon of very great Diſtinction. I did not know who it was then, but I afterwards underſtood it was Mr. *Lockmann*, that was the Perſon that was to have the Money; and he asked, if we did not think it for our Intereſt to make ſuch a Perſon our Friend?

Mr. *Sol. Gen.* Was there any thing more ſaid?

Mr. *Tho. Bennet.* My Lord *Macclesfield* ſaid, that in caſe this Money was not paid, and ſome Method found to make up the Deficiency of Mr. *Dormer*, he believed it might occaſion a Parliamentary Enquiry, which might hurt him very much, but, ſaid he, I believe it will hurt you Gentlemen much more.

Mr. *Lutwyche.* Were there any of the Maſters that asked him any Queſtions, how he apprehended it would come into Parliament?

Mr. *Tho. Bennet.* Yes, Mr. *Holford* asked him the Queſtion, Can your Lordſhip imagine, in what Method this may come into Parliament? My Lord anſwered, Upon the Meeting of every Parliament, Committees were choſen by the Houſe of Commons, and among the reſt there was a Committee of the Courts of Juſtice, and he thought it very likely, that That Committee might take this under Conſideration.

Mr. *Sol. Gen.* What was ſaid upon the Maſters Refuſal to raiſe the 1000 *l.*?

Mr. *Thomas Bennet.* After Mr. *Lightboun* refuſed to pay towards the 1000 *l.* my Lord then ſaid he would make up that.

Mr. *Sol. Gen.* Was there any Talk of *Dormer's* Deficiency?

Mr. *Tho. Bennet.* There was ſome Diſcourſe about making up Mr. *Dormer*'s Deficiency. Several of the Maſters were againſt it. No Scheme could be found that would make it up. I ſaid upon that Occaſion, that it was a bottomleſs Pit, and Mr. *Edwards* had not given Satisfaction to any of the Maſters what the Deficiency was.

Sir *George Oxenden.* Was there any mention made at this Meeting of the Statute of *Edward* VI.

Mr. *Tho. Bennet.* My Lord Chancellor ſaid, He did not know but our Offices might come within the Statute of *Edward* VI: And, if that ſhould be

ſo

ſo reſolved by Parliament, we muſt forfeit our Offices; and therefore had we not better do ſomething than forfeit our Offices?

Mr. Serj. *Pengelly*. My Lords, we beg Leave to call Mr. *Lockmann*, to whom this 1000 *l.* was paid, and to ſhew your Lordſhips the Declaration that was made by the Earl of *Macclesfield* at that Time.

Mr. *Lutwyche*. We beg Leave firſt to read the Order in the Cauſe of *Harper* and *Cate*.

[*The Order is proved.*

Mr. *Ralph Paxton* reads.

Sabbati quinto Die Decembris, Anno Regni Georgii Regis undecimo, inter Jana' Harper vidua' Quer' Thoma' Caſe Clericu' & Sara' Maria' uxor' ejus, Henricu' Halſey, & alios Defendentes.

UPON opening of the Matter this preſent Day unto the Right Honourable the Lord High Chancellor of *Great Britain*, by Mr. *Sollicitor General* and Mr. *Williams*, being of Council for the Plaintiff; and Mr. *Benjamin Jackman*, in the Preſence of Mr. *Talbott*, of Council for the Defendants: The Caſes. It was alledged, That it being, by the Order made on the hearing of this Cauſe (*inter alia*) ordered and decreed, that the Sum of 500 *l.* Pounds, Part of the Marriage Portion of the Plaintiff, receiv'd by *Thomas Harper* Clerk, her late Husband, ſhould be made good to her with Intereſt from his Death, at the Rate of 5 *l. per Cent. per Annum*, together with her Coſts of this Suit, to be taxed by Mr. *Dormer*, then one of the Maſters of this Court, out of the ſaid *Thomas Harper*'s Eſtate (for which, and other Purpoſes, in the ſaid Order, ſo much as ſhould be neceſſary of the ſaid *Thomas Harper*'s Eſtate was to be ſold to the beſt Purchaſer that could be got for the ſame, with the Approbation of the ſaid Maſter:) And the ſaid Maſter having, by his Report, (made purſuant to the ſaid Order, and) dated the 12th of *December*, 1716, certified the Sum of 557 *l.* 16 *s.* 05 *d.* to be due to the Plaintiff for Principal and Intereſt, beſides Coſts. And the ſaid Defendants having been ſerved with a Writ of Execution of the ſaid Decree, the ſaid Maſter, by his Report dated the 9th of *November*, 1717. allowed the ſaid *Jackman* the Purchaſe of three Houſes at *Kenſington* (Part of the Premiſes directed to be ſold) at the Sum of 260 *l.* And the ſaid Maſter's Report being afterwards abſolutely confirmed, the ſaid *Jackman* obtained an Order of the 19th of *December*, 1717. whereby it was ordered, That the Writings belonging to the ſaid Eſtate, purchaſed by the ſaid *Jackman*, ſhould be delivered to his Council, and that the Tenants of the ſaid Eſtate ſhould attorn to him, on bringing his Purchaſe Money before the ſaid Maſter. And the ſaid *Jackman* did accordingly, on the 24th of the ſame *December*, bring his ſaid Purchaſe Money before the ſaid Maſter, as by his Certificate of that Date, now read, appears, and the Tenants attorned to the ſaid *Jackman*: But the Defendants have ever ſince, by trifling Pretences and Excuſes, put off the executing proper Conveyances to the ſaid *Jackman*, although the ſame have been long ſince ſettled and allowed by Mr. *Edwards*, one of the Maſters of this Court, the ſaid Mr. *Dormer*'s Succeſſor, as by the Affidavits of *Joſeph Herring* and *Thomas Atwood* appears. It was therefore prayed, that all Parties may forthwith execute Conveyances of the ſaid Houſes to the ſaid Mr. *Jackman*, or as he ſhall appoint: And it was on the Plaintiff's Behalf prayed, that the ſaid Purchaſe Money may be paid to her, towards Satisfaction of what is due to her, by vertue of the ſaid Decree: Whereto the Council for the Defendants had Caſes alledged, that they are intitled to the Reſidue of the ſaid *Tho. Harper*'s Eſtate, after ſuch Payments, as are directed by the ſaid Decree to be made out of the ſame, are made, and the Defendants *Caſe* and his Wife were always ready to join in executing the ſaid Conveyances, upon an Application being made of the ſaid *Jackman*'s Purchaſe Money towards what is due to the Plaintiff; but being apprehenſive of a Deficiency of Mr *Dormer*'s Eſtate, to anſwer the Monies brought before him, purſuant to the Orders of this Court; and conceiving they ought not to be Sufferers, though ſuch Deficiency might appear, and the Delay being occaſioned by the Purchaſer, and not by the Plaintiff, and the ſaid Maſter not having ſettled the ſaid Conveyances, they did therefore ſcruple to execute the ſaid Conveyances, until the ſaid *Jackman*'s Purchaſe Money ſhould be applied to the Purpoſes in the ſaid Decree; but are willing, if the Court ſhould ſo think proper, on Payment of the ſaid 260 *l.* Purchaſe Money to the Plaintiff, and the ſaid *Tho. Harper*'s Eſtate being diſcharged of ſo much, to execute the ſaid Conveyances. Whereupon, and upon hearing of the ſaid Affidavits of the ſaid *Joſeph Herring* and *Thomas Atwood*, and an Affidavit of Notice to the Defendant *Halſey* read, and what was alledged on both Sides: His Lordſhip doth order, that it be referred to the ſaid Mr. *Edwards*, to examine, whether the ſaid 260 *l.* was depoſited with the ſaid Mr. *Dormer*, for the Benefit of any particular Perſon, and whom, and what was the Occaſion of the Delay, that the ſaid Conveyances were not executed, and the ſaid 260 *l.* Purchaſe Money paid out before the Year 1720. and whether there is likely to be a Loſs of any Monies depoſited with the ſaid Mr. *Dormer*: And, upon the ſaid Maſter's Report, ſuch further Orders ſhall be made, as ſhall be juſt.

Mr. Serj. *Pengelly*. My Lords, this Order was made in *December* laſt: It is a Direction to Mr. *Edwards* to ſee, whether there was likely to be any Loſs of any Monies depoſited with Mr. *Dormer*: We pray that Mr. *Lockmann* may be ſworn.

Mr. *Lockmann* ſworn.

Mr. Serj. *Pengelly*. We beg Leave that Mr. *Lockmann* may be asked, whether he attended upon the Earl of *Macclesfield* at any Time relating to a Sum of Money, and where.

Mr.

Mr. *Lockmann.* I received an Order from the Earl of *Macclesfield* upon Mr. *Edwards* for 1000 *l.* but not being able to receive it of Mr. *Edwards*, I went to *Kenſington* to wait upon the Earl of *Macclesfield*, and told his Lordſhip the Neceſſity I had for this 1000 *l.* which belonged to Mrs. *Chitty*, but the Benefit of it was made over to me; that I had the Misfortune to be backwards in my Affairs, and had ſome *South-Sea* Contracts to make up, and had made a Compoſition of my Debts, for which I had about three Weeks to pay it in, and therefore I deſired the Favour of his Lordſhip to order me the Payment of this 1000 *l.* His Lordſhip was pleaſed to tell me, that if I attended him in Town, and applied to him there, I ſhould have the Money paid. Upon which I waited upon his Lordſhip in Town; and when I had the Honour to ſee his Lordſhip, he told me, that he had enquired into the Affair relating to that Money upon which the Order was made, that it was in Mr. *Dormer*'s Office, where there was a Deficiency, that he could not yet bring all the Maſters to ſettle that Matter; but if I would come a few Days after, he would ſee what he could do for me. Thereupon I attended ſeveral Days, and went to *Weſtminſter-Hall*, and ſpoke to Mr. *Cottingham*, and he ſaid great Pains had been taken by my Lord, but he had not yet been able to bring any thing to bear, but he did not doubt but in a little Time he could bring it to bear to his Satisfaction; there had been ſome Motions made by Serjeant *Cheſſhyre*, &c. which had frightened the Maſters from raiſing Money; but if I attended in a few Days, he would do what he could for me. I waited ſome Days, and at laſt I took the Freedom to wait upon my Lord *Macclesfield* at his own Houſe in *Lincoln's-Inn* Fields, and I told his Lordſhip I had attended many Days in Town, and had neglected my Duty and Service; that the next Day was the laſt Day appointed to pay my Compoſition, and having depended upon this Money, I had made no other Proviſion. Whereupon his Lordſhip ſaid, he had taken a great deal of Pains, and had ſpoken to the Maſters, and that I ſhould attend his Lordſhip next Day at *Weſtminſter* at Ten, and he would ſee what he could do for me, but that there was none of the Eſtate of Mr. *Dormer* left. I waited upon his Lordſhip accordingly the next Day at *Weſtminſter*. His Lordſhip called me into his Room, and told me that Mr. *Cottingham* ſhould pay me the 1000 *l.* but he believed there would come no more, that this would be the laſt of the Money, or the laſt Sum that Mrs. *Chitty* would receive; and that if ſhe had nothing elſe, I might, by marrying her, in Expectation of a Fortune, make myſelf worſe than I was.

Mr. *Dodington.* I deſire Mr. *Lockmann* may be asked, what the whole Sum was that was paid in?

Mr. *Lockmann.* I took it to be about 10000 *l.*

Mr. Serj. *Pengelly.* I deſire he may be asked, if the Earl of *Macclesfield* gave any further Reaſons, why it was like to be the laſt Sum?

Mr. *Lockmann.* The Earl of *Macclesfield* did not, at that Time, give me any Reaſon; but the Day before, when I had the Honour of ſeeing his Lordſhip, at his Houſe in *Lincoln's-Inn-Fields*, and once before that, his Lordſhip told me that the Maſters in Chancery were apprehenſive of loſing a great deal of their Privileges and Profits of their Places; and therefore ſome of them were not willing to advance any Money.

Mr. *Weſt.* My Lords, I beg Leave to ask Mr. *Lockmann*, whether he received any Direction or Intimation, as to the keeping of this private, the telling, or not telling it?

Mr. *Lockmann.* I did receive no Intimation at that Time; afterwards, when the Sollicitor met me, he ask'd me, Pray, ſays he, Mr. *Lockmann*, have you received the 1000 *l.* you ſollicited for? Yes, I have received it. Pray, who then paid it you? I told him Mr. *Cottingham*; ſays he, Mr. *Cottingham* denied it to me. Upon that I met Mr. *Cottingham* ſome Time afterwards in the Court of Requeſts. He told me I ſhould ſay nothing of it: Beſides this, I received no Intimation to keep it ſecret.

Mr. *Weſt.* What did he ſay to you then?

Mr. *Lockmann.* He ſaid ſaid at firſt meeting me, You can't fare well, but you muſt cry out Roaſt-meat. I, being not well acquainted with that Phraſe, did not know what he meant. I did not know that I had ever eat Roaſt-meat or boil'd Meat with him either; ſo I told him, if that was in relation to his paying me the 1000 *l.* it was only what was due, and I hoped there would be Care taken to anſwer the Remainder. He anſwered, he could not tell what the Conſequence would be, whether ever it would be made up, or not, he could not tell, he was very uncertain.

E. of *Macclesfield.* Sir, I deſire to know off you, whether you did not repreſent yourſelf to me to be in the utmoſt Diſtreſs, if this Money was not paid to you, that in ſuch Caſe you muſt be ruined?

Mr. *Lockmann.* I remember I told his Lordſhip, that this Money, I had borrowed it of Mrs. *Chitty*, that I had ſettled a Compoſition with my Creditors and wanted this Money to ſatisfy them; that it muſt be paid the next Day; and if I did not then pay it, it would be a great Damage to me; but I preſſed his Lordſhip more, as I depended upon his Lordſhip's Promiſe, and that was the Reaſon I preſs'd it the more.

E. of *Macclesfield.* I deſire he may be asked, whether I ever promiſed to pay him at any Time before that?

Mr. *Lockmann.* When I went to wait upon your Lordſhip at *Kenſington*, your Lordſhip promiſed me it ſhould be paid; that, aſſoon as you came to Town I ſhould apply to your Lordſhip, and you would give Orders, and it ſhould be done.

E. of *Macclesfield.* Whether he did not look upon it, that I did this out of Compaſſion to him?

Mr. *Lockmann.* I took it as Part of a Sum of Money due, and I did not look upon it as Charity, or out of Compaſſion.

E. of *Macclesfield.* I deſire to know, whether he did not intreat it of me as an Act of Compaſſion to him?

Mr. *Lockmann.* I don't underſtand the *Engliſh* Terms, I did not uſe the Word Compaſſion; I begg'd that your Lordſhip would be ſo good as to order me the Money.

E. of *Macclesfield.* I deſire to know, whether the firſt Time he applied to me I promiſed to pay the Money?

Mr. *Lockmann.*

Mr. *Lockmann.* Your Lordſhip promiſed the Order ſhould be given to the Maſter, and that I ſhould be paid.

E. of *Macclesfield.* When was that Promiſe?

Mr. *Lockmann.* When you promiſed to order the Maſter, and I ſhould have the Money.

E. of *Macclesfield.* How long before?

Mr. *Lockmann.* I can't very well remember; becauſe the Sollicitor waited ſeveral Times upon the Maſter, and the Maſter told him there was nothing. I went to the Maſter's Houſe, and then to the Rolls, and there I ſaw him; and he told me there were no Aſſits in his Hands of Mr. *Dormer's.*

E. of *Macclesfield.* I deſire to know, whether he did not deſire a further Sum, after this 1000 *l.* was paid by Mr. *Cottingham,* and how much?

Mr. *Lockmann.* My Lord, I ask your Lordſhip's Pardon, I don't remember I then ask'd any other Sum. When I ſaw your Lordſhip afterwards, I asked your Lordſhip, if it was not poſſible to have another 1000 *l.* You was pleaſed to tell me, there could be no more paid.

E. of *Macclesfield.* Did not you ſollicit for a further Sum, till Mr. *Cottingham* chid you?

Mr. *Lockmann.* Mr. *Cottingham* was a little angry, when I preſs'd him. I went out of Doors, Mr *Cottingham* followed me. I ſtood in the Yard, Mr. *Cottingham* came out, and told me he had an Order from my Lord Chancellor to call the Maſters to a Meeting, and ſee what could be done. I ſaid, ſtill this is uncertain, how ſhall I do if I have not this Money? it will be a great Prejudice to me.

E. of *Macclesfield.* I deſire to know, whether he did not ask a further Sum of 500 *l.* or 570 *l.*

Mr. *Lockmann.* There was an Order, on a Letter of Attorney from Mrs. *Chitty,* for that Sum. But never, after I was at your Lordſhip's Houſe at *Kenſington,* did I ask if I could have a thouſand Pounds more.

E. of *Macclesfield.* When was that 500 *l.* paid?

Mr. *Lockmann.* I don't know.

E. of *Macclesfield.* I deſire to know, whether between the Time you ſay you was promiſed the 1000 *l.* and the Time of paying it, you did not deſire to have the Sum of 574 *l.* advanced for Mrs. *Chitty's* Uſe.

Mr. *Lockmann.* When your Lordſhip had told me that 1000 *l.* was all that could poſſibly be obtained, I made no further Sollicitations.

E. of *Macclesfield.* How long was it that you came to *Kenſington,* to ask me for that 1000 *l.* before the other 1000 *l.* was paid?

Mr. *Lockmann.* Three Weeks before.

E. of *Macclesfield.* Then after that Time you never demanded any more?

Mr. *Lockmann.* After your Lordſhip had told me that was all that could be obtained, then I deſiſted from asking any more.

E. of *Macclesfield.* And that was about three Weeks before the Time you received the Money?

Mr. *Lockmann.* I believe, between a Fortnight or three Weeks, or thereabouts.

Mr. *Com. Serj.* I deſire he may be asked, whether he can be certain as to the Expreſſion, whether this was the laſt Money that was like to be paid, or that my Lord would pay.

Mr. *Lockmann.* It was, as I remember, in theſe Words: If the Lady hath no other Fortune than what is in *Chancery,* in the Maſter's Hand, this will be the laſt of it.

Mr. *Sol. Gen.* We deſire Mr. *Atwood* may be called.

Mr. *Atwood* ſworn.

Mr. Serj. *Pengelly.* My Lords, we deſire Mr. *Atwood* may be asked, whether he was in Court at the Time a Motion was made upon an Order in a Cauſe between *Harper* and *Cate.*

Mr. *Atwood.* My Lords, I was at my late Lord Chancellor's Houſe, where, about the 5th of *December* laſt, the Motion was made. I was Sollicitor for Mrs. *Harper* in the Cauſe. The Occaſion of it was, There was an Eſtate decreed to be ſold, and the Money was to be paid into the Maſter's Hands, who was Mr. *Dormer:* The Money was accordingly paid, and the Conveyances approved of by the Council, and a Fine agreed upon; but at laſt the Parties would not execute, unleſs the Money was paid them; objecting there would be a Deficiency in *Dormer's* Office: Therefore they mov'd that they might not be obliged to execute the Conveyance, till the Money was applied and paid to the Plaintiff. My Lord Chancellor was pleaſed to declare thereon, that he had heard there would be a Deficiency of Mr. *Dormer's* Effects; but it had never judicially come before him; and what Knowledge he had of it was only as publick News, and referred it to Mr. *Edwards* to examine, whether there was likely to be a Deficiency, or not. I was near two Months before I could get this Order paſſed; and then the Impeachment came on. The Regiſter told me, he was afraid this Order would do ſome Miſchief. When I had got the Order, I was told by ſeveral People about the Town, that Mr. *Dormer's* Effects were very defective; and that my Lord Chancellor had directed a Compoſition to be made with one *Wilſon* who was a Banker; and had directed Mr. *Hiccocks* to compound for Half a Crown in the Pound, and that others had twenty Shillings. Lord Chancellor had directed an Enquiry to be made, whether any Deficiency. I was adviſed to put in theſe Words: *By what Means;* becauſe I was told then it was, by reaſon of compounding that Debt with *Wilſon;* but the Regiſter would not let them ſtand.

Mr. Serj. *Pengelly.* The making of the Order, in this Caſe, confirms the Evidence of Mr. *Atwood,* that his Lordſhip declared he had heard of it no other-ways than as publick News; becauſe by this Order he directs Mr. *Edwards* to enquire, whether there was likely to be a Deficiency, or not, although it had been ſo well known to his Lordſhip ſome Years before.

Mr. Serj. *Probyn.* He ſays there are Words ſtruck out of the Order; I deſire to know, whether thoſe Words were not added by himſelf to the Order?

Mr. *Atwood.* Yes, they were added by me before it paſſed.

Mr. Serj. *Probyn.* When?

Mr. *Atwood.* After I had the Order from the Regiſter.

Mr. Serj. *Pengelly.* When was that?

Mr. *Atwood.* It was near two Months before I could get the Order paſſed.

E. of *Macclesfield.* Had you the Order paſſed before the Impeachment?

Mr. *Atwood.* Yes, I believe I had.

E. of *Macclesfield.* Had you it paſſed before this Matter came into Parliament?

Mr. *Atwood.* I don't particularly know; I believe it was before your Lordſhip was impeached.

E. of *Macclesfield.* Whether was it after I had parted with the Seals?

Mr. *Atwood.* I believe after.

E. of *Macclesfield.* How long was it before you added thoſe Words?

Mr. *Atwood.* Two or three Days after I had got the Order.

E. of *Macclesfield.* When was it the Regiſter ſtruck out thoſe Words?

Mr. *Atwood.* I can't ſay, I believe it was before the Impeachment. The other Side had let thoſe Words be in; but yet the Regiſter ſtruck them out.

E. of *Macclesfield.* Was it after I had ceaſed to be Chancellor?

Mr *Atwood.* I believe it was.

E. of *Macclesfield.* Was any thing ſaid, at that Time, of the Accident of *Wilſon*'s breaking and *Poulter*'s going off?

Mr. *Atwood.* I do remember your Lordſhip ſaid *Wilſon* was become Bankrupt, and that he had Money of Mr. *Dormer*'s; and you ſaid ſomething of a Perſon that was ſued by *Wilſon*, and of a Recovery againſt him, and of an Action brought for an Eſcape; and you concluded, upon the Whole, that all you knew of the Matter was only as publick News. This was after you had given an Account of the Matter of *Wilſon* and of the Marſhal.

Dr. *Sayer.* I deſire he may be asked, whether my Lord did not expreſs a Doubt, how theſe Matters might come out?

Mr. *Atwood.* I don't know what his Lordſhip was pleaſed to doubt of.

Mr. Serj. *Probyn.* I deſire Mr. *Atwood* would recollect himſelf, whether there was any Notice taken, how this might come out, when the Report of the Maſters ſhould be made?

Mr. *Atwood.* I don't remember any thing tending to that.

Mr. *Com. Serj.* Whether he took any *Memoranda* of theſe Words, and when?

Mr. *Atwood.* No, I took no *Memoranda* of them, till I was ſummoned to attend the Committee.

Mr. *Com. Serj.* I deſire Mr. *Atwood* may give a Reaſon, how he comes to forget Facts, and remember a Form of Words?

Mr. *Atwood.* I don't remember all the Facts that have been asked.

Mr. *Robins.* Whether my Lord did not mention a particular Sum that was owing from *Wilſon* to *Dormer*?

Mr. *Atwood.* I believe my Lord did mention a Sum, and I believe it was 18000 *l.*

Mr. *Robins.* Whether he did not mention that *Wilſon* had brought an Action of Eſcape againſt the Marſhal?

Mr. *Atwood.* Yes, that *Wilſon* had brought an Action of Eſcape againſt the Marſhal?

Mr. *Robins.* Whether he did not mention, that *Wilſon* had recovered a Judgment againſt the Marſhal?

Mr. *Atwood.* Yes, that *Wilſon* had recovered a Judgment.

Mr. *Robins.* Whether was there any thing ſaid of the Eſcape of *Poulter*?

Mr. *Atwood.* Yes, my Lord did mention, that there was an Action brought againſt the Marſhal, for that very Eſcape.

Mr. *Com. Serj.* Whether my Lord having mentioned theſe Particulars, he did not from thence infer, he could not then tell, how Matters might come out?

Mr. *Atwood.* I do not remember any thing of that.

Mr. *Lutwyche.* My Lords, I ſhall only make one ſhort Obſervation. The Lord *Macclesfield* ſaith in his Anſwer, that he doth not believe that he had any Diſcourſe with the Maſters about the Payment of this 1000 *l.* I ſubmit it to your Lordſhips, whether there are not four or five Witneſſes to it. We have now done with the Sixteenth Article.

Mr. *Sol. Gen.* We ſhall proceed to our Proofs on the Seventeenth Article. And it will be neceſſary to lay before your Lordſhips three or four Orders, for the Proof of this Article.

Mr. *Ralph Paxton*, being called, appeared, and proved the ſeveral Orders following, which were then all read.

An Order, dated 18 *January*, 8° *Georgij Regis.*

Another, dated 8 *March*, 8° *Georgij Regis.*

Another, dated 5 *July*, 8° *Georgij Regis.*

Another, dated 22 *December*, 9° *Georgij Regis.*

Jovis decimo octavo Die Januarij Anno Regni D'ni Georgij Regis octavo, inter Jonathan' Jones Infant' per Eliza' Jones Vidua' prox' Amit' & dicta' Eliza' Jones Quer' Thoma' Jett Arm' & Petru' Wiſe, Defendentes.

UPON opening of the Matter, this preſent Day, unto this Court, by Mr. Serjeant *Cheſhire*, of Council with the Plaintiff *Jonathan Jones*, in the Preſence of Mr. *Ketleby*, of Council with the Plaintiff *Elizabeth Jones*; and the Defendant *Wiſe*, and Mr. *Horſeley*, of Council with the Defendant *Jett*. The Council for the Plaintiff *Jonathan Jones* alledged, that *Jonathan Jones* deceaſed, late Father of the Plaintiff *Jonathan Jones*, and Husband of the Plaintiff *Elizabeth*, by his Will, deviſed one Moiety of his Eſtate, which was wholly perſonal, after Payment of his Debts and Funeral Expences, to the Plaintiff *Elizabeth*, and the other Moiety to the Plaintiff *Jonathan Jones*, when he ſhould attain his Age of One and Twenty Years, together with the Produce thereof, and made the Defendants, *Jett* and *Wiſe*, Executors in Truſt for the ſaid Plaintiffs, who duly

duly proved the ſaid Will. That the Plaintiffs having brought their Bill in this Court, to have an Account of the ſaid Teſtator's Eſtate, for a Maintenance for the Plaintiff *Jonathan*, during his Infancy, and a Performance of the ſaid Will: Upon the Hearing of this Cauſe, it was referred to Mr. *Dormer*, then one of the Maſters of this Court, to take an Account of the ſaid Teſtator's Eſtate; and the Surplus thereof, after the Deductions therein mentioned, was to be divided into Moieties; and the Plaintiff *Elizabeth*'s Moiety was to be forthwith aſſigned to her; and the other Moiety was to be placed out at Intereſt, by the ſaid Maſter, for the ſaid Infant's Benefit. And the ſaid Maſter was to aſſign a Maintenance for the ſaid Plaintiff, for the Time paſt; and was alſo to conſider what was proper to be allowed for his Maintenance, for the future. That the ſaid Maſter, having proceeded to take an Account of the ſaid Teſtator's Eſtate, it appeared, that ſo much thereof was raiſed by the Sale of *Bank* and *South-Sea* Stock, and brought before the Maſter, as amounted to Five Thouſand, Nine Hundred, and Eighty-five Pounds, Three Shillings, and Four Pence, one Moiety whereof, after Payment of her Share of the Coſts of this Suit, belongs to the Plaintiff *Elizabeth Jones*, and has been accordingly paid to her. And the other Moiety belongs to the Plaintiff *Jonathan Jones*, and is now in the Hands of Mr. *Edwards*, one of the Maſters of this Court, who ſucceeded the ſaid Mr. *Dormer*, and to whom the Reference, in this Cauſe, hath been transferred. That the Plaintiff, *Jonathan Jones*, hath now attained his Age of One and Twenty Years, as by Affidavit and Certificate appears, and is intitled to receive his Moiety of the ſaid Monies, after Deduction of his Share of the ſaid Coſts. And having contracted ſome conſiderable Debts, for his Maintenance, and otherwiſe, during his Infancy, for which he is threatened no be arreſted, in caſe the ſaid Debts are not ſpeedily paid: It was therefore pray'd, that the ſaid Maſter may, out of the Monies in his Hands, pay to the Plaintiff, *Jonathan Jones*, the Sum of Four Hundred Pounds, which, upon reading the ſaid Affidavit and Certificate, and upon hearing the Council for the Plaintiff, *Elizabeth Jones*, and the Defendant, *Wiſe*, who conſented thereto, and the Council for the Defendant, *Jett*, who did not oppoſe the Payment thereof, is ordered accordingly.

Jovis octavo Die Martij Anno Regni D'ni Georgij Regis octavo, inter Jonathan' Jones & Eliza' Jones Quer' Thoma' Jett Arm' & Petru' Wiſe, Defendentes.

UPON opening of the Matter, this preſent Day, unto the Right Honourable the Lord High Chancellor of *Great Britain*, by Mr. Serjeant *Cheſhire*, being of Council for the Plaintiff, *Jonathan Jones*, in the Preſence of Mr. *Ketlebey*, of Council for the Plaintiff, *Elizabeth Jones*, and for the Defendant, *Wiſe*: It was alledged, that *Jonathan Jones* deceaſed, late Father of the Plaintiff *Jonathan Jones*, and Husband of the Plaintiff *Elizabeth Jones*, by his Will, deviſed one Moiety of his Eſtate (which was wholly perſonal) after Payment of his Debts and Funeral Expences, to the Plaintiff *Elizabeth*, and the other Moiety to the Plaintiff *Jonathan Jones*, when he ſhould attain his Age of One and Twenty Years, together with the Produce thereof; and made the Defendants, *Jett* and *Wiſe*, Executors in Truſt for the ſaid Plaintiffs; and the ſaid Defendants duly proved the ſaid Will. That the Plaintiffs exhibited their Bill into this Court againſt the Defendants, to have an Account of the ſaid Teſtator's Eſtate, and a Performance of his Will. And, upon the hearing of the Cauſe, it was referred to Mr. *Dormer*, then one of the Maſters of this Court, to take an Account of the ſaid Teſtator's Eſtate; and the Surplus thereof, after the Deductions therein mentioned, was to be divided into Moieties; and the Plaintiff *Elizabeth*'s Moiety was to be forthwith aſſigned to her. And the other Moiety was to be placed out at Intereſt, by the ſaid Maſter, for the ſaid Infant's Benefit. That the ſaid Maſter having proceeded to take an Account of the ſaid Teſtator's Eſtate, it appeared, that ſo much was raiſed by the Sale of the *Bank* and *South Sea* Stocks, and brought before the ſaid Maſter, as amounted to Five Thouſand, Nine Hundred, and Eighty-five Pounds, Three Shillings and Four Pence, one Moiety whereof, after Payment of the Plaintiff *Elizabeth Jones*'s Share of the Coſts of this Suit, belonged to her, and had been accordingly paid to her. And the other Moiety belonged to the Plaintiff *Jonathan Jones*, and was in the Hands of Mr. *Edwards*, one of the Maſters of this Court (who ſucceeded the ſaid Mr. *Dormer*.) That the Plaintiff, *Jonathan Jones*, has attained his Age of One and Twenty Years, as by Certificate and Affidavit appears, and is intitled to receive his Moiety of the ſaid Money, after Deduction of his Share of the ſaid Coſts: And he had contracted, for a Poſt in the Army, which, with his Equipage, will amount to Two Thouſand Pounds, which he is adviſed will be very advantageous for him to purchaſe; and therefore it was pray'd, that the ſaid Maſter may pay to the Plaintiff, *Jonathan Jones*, out of the Money in his Hands, a Sum not exceeding Two Thouſand Pounds to be laid out in the Purchaſe of a Commiſſion, and for other Purpoſes. Whereupon, and upon hearing of the Plaintiff, *Elizabeth Jones*, and Defendant *Wiſe*'s Council; and hearing an Affidavit of Notice of this Motion to the Defendant, *Jett*, read, and what was alledged by the Council on both Sides: It is ordered, that the ſaid Maſter do, out of the Money in his Hands, pay unto the Plaintiff, *Jonathan Jones*, the Sum of Two Thouſand Pounds; the Plaintiff, *Elizabeth Jones*, and the Defendant, *Wiſe*, having ſubſcribed the Regiſter's Book, ſignifying their Conſent thereto.

Jovis

Jovis quinto Die Julii Anno Regni D'ni Georgii Regis octavo, inter Jonathan' Jones & Eliza' Jones Quer' Thoma' Jett Arm' & Petru' Wise, Defendentes.

UPON opening of the Matter this preſent Day, unto the Right Honourable the Lord High Chancellor of *Great Britain*, by Mr. Serj. *Cheſhire*, being of Council for the Plaintiff, it was alledged, That *Jonathan Jones* deceaſed, Father of the Plaintiff *Jonathan Jones*, and Husband of the Plaintiff *Elizabeth Jones*, by his Will deviſed one Moiety of his Eſtate (which was wholly perſonal) after Payment of his Debts and Funeral Expences, to the Plaintiff *Elizabeth*, and the other Moiety to the Plaintiff *Jonathan Jones*, when he ſhould attain his Age of One and Twenty Years, together with the Produce thereof, and made the Defendants, *Jett* and *Wiſe*, Executors in Truſt for the ſaid Plaintiffs, and the ſaid Defendants duly proved the ſaid Will. That the Plaintiffs exhibited their Bill into this Court againſt the Defendants, to have an Account of the ſaid Teſtator's Eſtate, and a Performance of his Will, and upon the hearing of the Cauſe, it was referred to Mr. *Dormer*, then one of the Maſters of this Court, to take an Account of the ſaid Teſtator's Eſtate; and the Surplus thereof, after the Deductions therein mentioned, was to be divided into Moieties, and the Plaintiff *Elizabeth*'s Moiety was to be forthwith aſſigned to her, and the other Moiety was to be placed out at Intereſt, by the ſaid Maſter, for the ſaid Infant's Benefit. That the ſaid Maſter having proceeded to take an Account of the ſaid Teſtator's Eſtate, it appeared by ſeveral Certificates from the ſaid Maſter, that ſo much thereof was raiſed by the Sale of the *Bank* and *South Sea* Stocks, and brought before him, as amounted to Five Thouſand nine Hundred and and eighty five Pounds three Shillings and four Pence, that one Moiety thereof, after Payment of the Plaintiff *Elizabeth Jones*'s Share of the Coſts of this Suit, hath been in purſuance of ſeveral Orders of this Court paid to her, and the other Moiety, which belonged to the Plaintiff *Jonathan Jones*, was paid over to Mr. *Edwards*, one of the Maſters of this Court (who ſucceeded the ſaid Mr. *Dormer*). That the Plaintiff *Jonathan Jones*, having attained his Age of One and Twenty Years, and being intitled to receive his Moiety of the ſaid Money, after Deduction of his Share of the ſaid Coſts, and he having contracted for a Poſt in the Army, which, with his Equipage, will amount to two Thouſand Pounds, he did, on the eighth Day of *March* laſt, apply to the Court for that Money, and it was then ordered, That the ſaid Maſter ſhould, out of the Money in his Hands, pay unto the Plaintiff *Jonathan Jones* the Sum of two Thouſand Pounds, the Plaintiff *Elizabeth Jones*, and Defendant *Wiſe*, having ſubſcribed the Regiſter's Book, ſignifying their Conſent thereto; that purſuant to the ſaid Order, the ſaid Maſter paid the ſaid two Thouſand Pounds, and there now remaining in his Hands of the Plaintiff *Jonathan Jones*'s Share of the ſaid Money, about the Sum of ſix Hundred and forty two Pounds. That the ſaid Plaintiff *Jonathan Jones*, having preſent Occaſion for the ſaid Money, hath executed a Letter of Attorney to the Plaintiff *Elizabeth Jones*, his Mother, dated the Five and Twentieth of *May* laſt, impowering her to receive all Monies due to him from the ſaid Maſter, and the Intereſt thereof, for the Purpoſes therein mentioned. It was therefore prayed, that the ſaid Maſter may pay to the ſaid Plaintiff, *Elizabeth Jones*, the Remainder of the Money which is in his Hands, belonging to the ſaid *Jonathan*'s Share, purſuant to the Letter of Attorney, executed for that Purpoſe, which, upon hearing of Mr. *Horſeley*, of Council for the Defendant *Jett*, and what was alledged on both Sides, his Lordſhip held reaſonable, and doth order the ſame accordingly.

Sab'ti viceſſimo ſecundo Die Decembr' Anno Regni D'ni Georgii Regis nono, inter Prideaux Sutton Cler' & Anna' Uxor' ejus Mercy Sheldon Spinſtr' & Egidiu' Lawrence gen' Extor' Winifred Sheldon Spinſtr' Defunct' Quer' Elizam Chitty & Joh'em Ruſſell & al' per Billa' ad revivend' & Supplement' Defend'.

WHEREAS the Defendant *Elizabeth Chitty*, on the Eleventh of this Inſtant *December*, preferred her Petition to the Right Honourable the Lord High Chancellor of *Great Britain*, ſhewing, That the Plaintiff and *Winifred Sheldon*, ſince deceaſed, having executed their Bill for an Account of the Eſtate of *Ralph Sheldon*, who died in the *Eaſt-Indies*; and to have their Shares and Proportions thereof, purſuant to his Will: It was on the hearing of this Cauſe, the eight and twentieth of *May*, One Thouſand Seven Hundred and Fifteen, declared, That the Defendant *Elizabeth Chitty* was intitled to one Third of the ſaid Eſtate, under the Will of the Teſtator *Sheldon*, her ſecond Husband, in her own Right, and to a Moiety of the other two Thirds, in right of, or, as ſurviving the Children ſhe had by the ſaid *Sheldon*, who were dead, and that the other Moiety of the ſaid two Thirds belonged to the Plaintiffs, or thoſe whom they repreſented, and decreed the ſame, after juſt Allowances, to be paid and diſtributed accordingly; and Sir *Robert Nightingale*, Bart. ſince dead, having, by his Anſwer, admitted to have in his Hands Ten Thouſand Four Hundred and Seventy Pounds, three Shillings and Six-pence, Part of the Teſtator's Eſtate: It was ordered, That he ſhould carry Ten Thouſand Pounds thereof, before Mr. *Dormer*, then one of the Maſters, to be by him placed out at Intereſt, on Government, or ſuch other Security as he ſhould approve of, for the Benefit of the Parties to whom the ſaid ſhould belong. In purſuance whereof, the ſaid Sir *Robert Nightingale* carried the ſaid Ten Thouſand Pounds before the ſaid Maſter, who placed the ſame out at Intereſt, and on the Nine and Twentieth of *July*,

July, One Thouſand Seven Hundred and Nineteen, though the ſaid Ten Thouſand Pounds, with the Intereſt, which had been received by the ſaid Maſter, amounting to Eleven Thouſand three Hundred and fifty nine Pounds, ſeven Shillings, and three Pence, the ſaid Maſter, by his Report, certify'd, That he had placed eleven Thouſand three Hundred Pounds, Part thereof, out on the Land Tax, for the Year One Thouſand Seven Hundred and Nineteen, at four Pounds *per Cent.* and that the Nine and Fifty Pounds ſeven Shillings and three Pence remained in his Hands; that on the third of *Auguſt*, One Thouſand Seven Hundred and Twenty, the Plaintiffs, by Petition, applied to his Lordſhip, That the Maſter might pay them ſome Money to carry on this Cauſe, and for their other Occaſions; upon hearing whereof, they were ordered Six Hundred Pounds out of the Money in the Maſter's Hands, which they have received accordingly. That the Defendant, *Elizabeth Chitty*, had, ever ſince the Death of her late Husband, *Joſiah Chitty*, wanted Money, not only to defend the ſaid Cauſe, but alſo for her Support, and other neceſſary Occaſions, and that neither ſhe, nor her late Husband, had received any Part of the Principal or Intereſt before the Maſter, nor any other Part of the Teſtator's Eſtate, except ſome Jewels which were delivered up by the Truſtees of the Teſtator's Will in *India*, to her and her late Husband, which, or the greateſt Part thereof, ſhe claimed as her *Paraphernalia*, but that ſhe had no Benefit or Advantage thereof, her Husband having ſold and diſpoſed of them in his Life-time. Therefore, *and for that the Money in the Hands of Mr.* Edwards, *one of the Maſters of this Court, who ſucceeded the ſaid Mr.* Dormer *in his Office, were conſiderably encreaſed by the Intereſt which had been received by him*, and for that the ſaid Mrs. *Chitty* was, as aforeſaid, intitled to two Thirds of the ſaid Teſtator's Eſtate, except what ſhould be decreed thereout to her Children, by her firſt Husband, who were intitled to one Moiety of their Father's Eſtate, which was poſſeſſed by the ſaid *Ralph Sheldon*, and for that ſhe was obliged to maintain them, it was prayed, That the ſaid Mr. *Edwards* might, out of the Money in his Hands, and which ſhould be paid in upon the coming in of any of the Securities taken for the ſame, pay unto the Defendant Mrs. *Chitty* ſuch Sum of Money as his Lordſhip ſhould think fit, to enable her to carry on the ſaid Cauſe, and for her immediate Support, and other Occaſions. Whereupon all Parties were ordered to attend his Lordſhip, on the then next Day of Petitions. And whereas the ſaid Plaintiffs, on the eighteenth Day of this Inſtant *December*, alſo preferred their Petition to his Lordſhip, ſhewing, *inter al'* That they were, thro' their great Occaſion for Money, forced to apply the greateſt Part of the Money, ordered them as aforeſaid, towards their Support; and that the ſaid Cauſe had been long depending, and very expenſive, and was likely to undergo greater Travail before the ſaid Maſter, before the ſaid Account could be taken, ſo that they had great Occaſion for more Money, not only to carry on the ſaid Cauſe, but alſo for their Support, and other neceſſary Occaſions; and therefore praying, that the ſaid Maſter might alſo out of the Monies in his Hands, and which ſhould be paid in, upon coming in of any of the Securities taken for the ſame, pay unto the Plaintiffs, or their Sollicitors, ſuch Sums of Money as his Lordſhip ſhould think fit, to enable them to carry on the ſaid Cauſe, and for their immediate Support and other Occaſions; and the Matter of the ſaid Petition, being ordered to come on with the Defendant *Chitty*'s Petition; and Council on both Sides this Day attending accordingly. Whereupon, and upon hearing both the ſaid Petitions read, and of what was alledged by the Council on both Sides: His Lordſhip doth order, That the ſaid Mr. *Edwards* do, out of the Money in his Hands, pay unto the Defendant, Mrs. *Chitty*, the Sum of Six Hundred Pounds, and alſo unto the Plaintiffs One Hundred Pounds a-piece, and it being now alledged, that *John Wyvill*, Eſq; having exhibited his Bill againſt the ſaid *Giles Lawrence*, for Payment of a Legacy of two Hundred Pounds bequeathed to him by the Will of the ſaid *Winifred Sheldon*. It was on the hearing the ſaid Cauſe, the firſt Day of *December*, One Thouſand Seven Hundred and Twenty One, decreed, That the ſaid Mr. *Wyvill* ſhould be paid the ſaid Legacy and Intereſt, together with the Coſts of that Suit, out of the Aſſetts of the ſaid *Ralph Sheldon*. It is further ordered, That the ſaid Maſter, do, out of the Money in his Hands, pay the Plaintiff, *Lawrence*, the further Sum of Three Hundred Pounds, to enable him to ſatisfy the ſaid Decree.

Mr. *Lutwyche*. Pray ſhew Mr. *Edwards* thoſe Orders.

[*The Orders ſhewn to Mr.* Edwards.

Mr. *Lutwyche*. My Lords, we deſire that Mr. *Edwards* may be asked, whether he hath paid any Money in that Cauſe?

Mr. *Edwards*. Here are two Cauſes, which is it you mean, that of *Jones* and *Jett*.

Mr. *Lutwyche*. Yes, that of *Jones* and *Jett*?

Mr. *Edwards*. The Money ordered, by thoſe ſeveral Orders, hath been paid by me.

Mr. *Lutwyche*. I deſire to know, whether Mr. *Edwards* can inform your Lordſhips, whether it is the whole Money, or but in part?

Mr. *Edwards*. It is the whole Money in the Cauſe.

Mr. *Lutwyche*. I deſire he may be asked, whether the Money was paid out of Mr. *Dormer*'s Effects, or out of his own?

Mr. *Edwards*. Out of Mr. *Dormer*'s Effects.

E. of *Macclesfield*. My Lords, Mr. *Edwards* is a little miſtaken, pleaſe to put the Orders in; here are three Orders in one Cauſe, and one in another; I deſire to know, whether in both Cauſes the whole Money was paid out?

Mr. *Edwards*. In that in *Jones* and *Jett*, the whole Money was paid out, in the other between *Sutton* and *Sheldon*, the Whole was not paid, but only Part.

Mr. *Serj. Pengelly*. We beg Leave to ask Mr. *Edwards*, whether he did not pay the Whole that was ordered by thoſe ſeveral Orders?

Mr. *Edwards*. Yes, my Lords.

Mr. *Lutwyche.* Mr. *Edwards* did tell your Lordſhips before, that all the Money, ariſing by Mr. *Dormer*'s Effects, was paid out and gone.

Mr. *Serj. Pengelly.* My Lords, we have gone through theſe three Articles that have been opened, and we ſhall call no more Proof to them.

Then the Houſe adjourned to Monday *next at Ten o' Clock in the Forenoon.*

The FOURTH DAY.

MONDAY, *May* 10.

The Lords being ſeated in their Houſe, and the Managers being come, and the Earl ſitting on a Stool, as before, and his Council and Sollicitors at the Bar, the Serjeant at Arms made Proclamation for Silence, as alſo another Proclamation, That all Perſons concerned were to take notice, that Thomas, *Earl of* Macclesfield, *now ſtood upon his Tryal, and they might come forth in order to make good the Charge.*

L. Ch. J. King. GEntlemen of the Houſe of Commons, you may proceed.

Mr. *Plummer.* My Lords, I am commanded by the Commons, to aſſiſt in maintaining their Impeachment againſt *Thomas*, Earl of *Macclesfield*; and when I conſider how neceſſary it is for the Honour of his Majeſty's Government, that an impartial Examination ſhould be made into the Behaviour of this Earl, while he enjoyed the High Office of Chancellor; I am perſuaded, that every good Subject muſt with Pleaſure obſerve, in what Manner this Proſecution is carried on; it muſt be a Satisfaction to them, to ſee the Commons placing a Confidence in your Lordſhips Juſtice, and proceeding in the Legal Parliamentary Method by Impeachments, and your Lordſhips meriting that Confidence, by laying aſide all uſeleſs Ceremonies, and making the Proſecution practicable and eaſy, a Harmony between the two Houſes of Parliament always to be wiſhed for, and which alone can bring Impeachments to a happy Iſſue, and deter great Offenders from oppreſſing their Fellow-Subjects.

My Lords, In former Reigns, Proſecutions of this Kind, have met with other Obſtructions, and the Crown has often interpoſed its Authority to ſave a Favourite Miniſter; but, his Majeſty, who has no other Views, but the Welfare and Happineſs of his People, and who is always attentive to their Intereſt, was the firſt who took notice, that the Earl of *Macclesfield* had abuſed the Truſt and Confidence repoſed in him. And who can (without the deepeſt Senſe of Gratitude) conſider the Conduct of his Majeſty in this Affair, who immediately diſmiſſed him his Service, and left him to the Juſtice of an injured Nation? And the Earl of *Macclesfield* himſelf will have this Advantage by it, that His Name will be delivered down to Poſterity, as a Monument of his Majeſty's Paternal Goodneſs to his People. The immenſe Liberalities, the great Honours, the high Dignities conferred on him by his Majeſty, will be ſo many Marks of his Royal Munificence to the Earl, while he appeared to be his Worthy and Faithful Servant. And Poſterity will with due Veneration obſerve, that neither the greateſt Favour, the neareſt Acceſs to his Sacred Perſon, nor any former Merits towards Himſelf, and his Royal Family, could in his Majeſty's Reign, ſhelter the Higheſt Officer of the Crown from Juſtice, who, preſuming on thoſe Advantages, would venture to oppreſs his Majeſty's Loyal and Faithful People.

My Lords, The particular Province, aſſigned me in this Proſecution, is to make good the 18th Article, wherein I ſhall have the Aſſiſtance of a Gentleman, who will amply ſupply all the Defects or Omiſſions I ſhall be guilty of.

As this Article has been read by your Lordſhips Clerk, I ſhall not miſpend your Time in a needleſs Repetition of it; but will obſerve, that the Subſtance of the Charge contained in it, Is a wilful Neglect of the High Truſt repoſed in the Earl of *Macclesfield*, as Chancellor, That he did not reſtrain the Maſters of the High Court of *Chancery*, from trafficking with the Suitors Money and Effects, but did permit and encourage that Practice, tho' he was adviſed to put a Stop to it, and fully informed of the Dangers, which were then likely to enſue, and which have ſince actually enſued, to the great Loſs and Injury of the Suitors of the ſaid Court.

My Lords, As this wilful Neglect is highly criminal in itſelf, ſo it is greatly aggravated by the unjuſt and corrupt Views which induced him to be guilty of it, and the pernicious Conſequences which have neceſſarily attended it; and, my Lords, ſince you have heard the Evidence that has been given on the former Articles, of the exorbitant Sums of Money which he exacted for the Diſpoſal of the Offices of Maſters in *Chancery*, even after *Dormer*'s Failure, we don't doubt but your Lordſhips are convinced that he left the Maſters, with that unreaſonable unlimited Power, over the Effects of the Suitors of the Court, with no other View, but as a Bait and Incitement to others, to purchaſe thoſe Offices (when Vacancies ſhould happen) at the ſame, or greater Prices.

As I have ſtated the Charge contained in this Article, in as clear a Manner as I am able; I beg Leave, my Lords, to make ſome Obſervations on the Earl's Anſwer. He begins with an abſolute Denial of his knowing, how the Maſters kept or diſpoſed of the Money and Effects belonging to the Suitors of the Court. This Anſwer, my Lords, was a Surprize to the Commons, as well becauſe ſuch an Ignorance would have been criminal in the Perſon, who ordered ſuch prodigious Sums of Money into their Hands, and who ſhould be ſuppoſed to have had

ſome

ſome Care of the Suitors, as alſo becauſe We have the cleareſt Proofs imaginable, that he did know it, and it has already been proved by the Examination of ſeveral of the Maſters before your Lordſhips. But what Want can we have of Proofs? when the Earl of *Macclesfield* himſelf, in his farther Anſwer to this Article confeſſeth it, by ſaying, that after Mr. *Dormer*'s Misfortune, he thought of ſeveral Methods, and ſeveral Propoſals were made to him by Perſons he conſulted on that Occaſion, to prevent any Inconvenience on the like Accident, for the future. Pray let us conſider, What was Mr. *Dormer*'s Misfortune? What was this Accident? Why truly, Mr. *Dormer* had trafficked with the Suitors Money and Effects, and had loſt near 30000 *l.* And this the Earl of *Macclesfield* knew, and this made him think how to prevent ſuch Inconveniencies, for the future. My Lords, here is one of thoſe Inconſiſtencies the Commons take Notice of in their Reply, and on which (without any farther Proofs) they might ſafely demand your Lordſhips Judgment.

But to conſider his Anſwer farther: He ſays, he believes it will not be held criminal in him, not to have eſtabliſhed any of the Propoſals that were made to him by the Perſons he conſulted on that Occaſion: Some Things were propoſed that he thought impracticable, ſome inſufficient, and ſome inconſiſtent with that compleat Regulation he hoped to make: The Objects, he propoſed to himſelf, were, to make good Mr. *Dormer*'s Deficiency, to ſecure the Suitors from any future Loſs, and to make ſeveral Regulations relating to the Offices of the Maſters: And he thought theſe would be beſt done together; nor had he perfected the Scheme of any of them to his own Satisfaction.

My Lords, I am unwilling to make any Obſervations on this Part of his Anſwer; it is in itſelf ſo groſs, I am afraid, if I took it in Pieces, I ſhould appear ludicrous, which I ſhall take great Care to avoid on ſo ſolemn an Occaſion.

But I appeal to your Lordſhips, if a Perſon was to read this Anſwer, who was not acquainted with the Times of theſe Occurrences, whether he muſt not imagine that the Earl of *Macclesfield* had quitted the Great Seal within ſome very ſhort Time after Mr. *Dormer*'s Failure. Whereas it has appeared to your Lordſhips, that Mr. *Dormer* went away from that Office in the Year 1720. and that the Earl of *Macclesfield* continued Chancellor till *January* laſt, which is more than four Years after, during all which Time (by his own Confeſſion) he knew the Affairs of the Maſters of the Court of *Chancery* to have been in great Diſorder, and to have wanted ſeveral Regulations: But, becauſe he could not think of a Scheme perfectly to his Mind to anſwer all his Deſigns, he therefore has done nothing. This Anſwer muſt be left to your Lordſhips Judgment, but, I am afraid, my Lords, the letting the Maſters go on, without any Check, was the Scheme the moſt to his Satisfaction, and moſt effectually obtain'd the Ends he really propos'd to himſelf, which were the making an exorbitant Gain by the Sale of their Offices, which muſt have fallen in their Price, if a Stop had been put to their trading with the Suitors Money.

My Lords, he farther anſwers, That he remembers no Propoſal that he thought would take it totally out of the Power of the Maſters to diſpoſe of the Securities or Effects, or effectually ſecure the Caſh. I can't omit taking Notice of the wording this Paragraph; and I believe your Lordſhips will agree with me, that the Words HE THOUGHT, TOTALLY, AND EFFECTUALLY, are thrown in with great Caution. My Lords, We think we can prove to You that a Propoſal was made to him, that would have taken it out of the Power of the Maſters to have diſpoſed of the Securities and Effects, and to have ſecured, in great Meaſure, the Caſh; and this Evidence the Earl of *Macclesfield* muſt be well aware of, for He has it in his Hands as well as We; and I foreſee the Strength of his Defence, in this Point, lies in the Caution of his Anſwer: But, my Lords, if any Propoſal was made to him, which would have cured the greateſt Part of the Evils the Court laboured under, I am ſure your Lordſhips will hold it criminal in him not to have made uſe of it, and the rather, becauſe he ſubſtituted no other in its Room.

My Lords, He admits he took no Security of the Maſters, and ſays, he was never asked ſo to do. My Lords, We will prove that he was asked ſo to do, and that taking Security was Part of the Propoſal I have mentioned. In this Place he takes Notice of his Predeceſſors, who (as he ſays) were wiſer Men than himſelf, and who took no Security of the Maſters. My Lords, We don't accuſe his Predeceſſors, nor are we obliged to juſtify them; but, if I may be permitted to give my own private Opinion, It is, that if ſuch Misfortunes had happened in his Predeceſſors Days, and ſuch Application had been made to them, they were ſo wiſe, they would have applied a proper Remedy: His not doing ſo, under theſe Circumſtances, We look on as a plain Permiſſion, and a ſtrong Encouragement to the Maſters to traffick with, and employ the Suitors Money for their own Gain and Profit. And it muſt appear ſo in a ſtronger Light, when your Lordſhips are acquainted that Mr. *Lightboun*, who is himſelf a Maſter in *Chancery*, was the Perſon who made thePropoſal, and who muſt (by my Lord's not uſing it) plainly ſee, that my Lord was reſolved to lay no Reſtraint on them, which might have tempted Mr. *Lightboun* himſelf to have made an ill Uſe of that Power: But as he profeſſed to my Lord Chancellor his Abhorrence of the Maſters abuſing their Truſt, by alienating the Suitors Effects, and deſired my Lord to put a Stop to that Practice; ſo it appeared by his Accounts given in before the Judges, that he had appropriated the ſpecifick Securities of the Suitors to every particular Cauſe. And, my Lords, we look on it as a great Aggravation of the Crimes contain'd in this Article, which I have now gone through, That my Lord *Macclesfield* ſhould continue to act with ſuch mean, low Views, as were unbecoming a Maſter in *Chancery*, when he had the Aſſiſtance of a Maſter, who behaved himſelf with a Prudence, Integrity, and Reſolution, which would have been becoming the Lord Chancellor.

Mr.

Mr. *Cary*. My Lords, It is my Province to aſſiſt the Gentleman, that ſpoke before me, in ſupporting the Charge of the Commons in the 18th Article, which he has open'd with ſo great Force and Perſpicuity, that it is unneceſſary for me to give your Lordſhips more Trouble upon it, than by making an Obſervation or two on the moſt material Parts. The Beginning of this Article ſets forth, *That the Earl of* Macclesfield *very well knew, or was inform'd, that the Maſters did, or that it was in their Power to diſpoſe of, and employ the Suitors* Money and Effects, to which, he is pleaſed evaſively to anſwer, " That he never knew " how the Maſters kept, or diſpoſed of the Mo- " ney and Effects belonging to the Suitors of " the Court." The contrary of this will be abundantly prov'd, in the Manner the Gentleman has already ſtated it.

But were it not, my Lords, ſo ſtrong in Proof, the Guilt to me appears ſelf-evident; 'tis much the ſame, whether he knew it, or knew it not; his Lordſhip may take the Alternative. What! did He, Lord Chancellor, ſupreme Director of the Court, the great Truſtee of *England* (who order'd the Money into the Maſter's Hands, who order'd it out of their Hands) did He know nothing of their Power over it? Was he the only Man in *England* that knew *nothing* of their Deficiency? And if he was, my Lords, Is that Ignorance an Excuſe, or Aggravation? But we ſhall prove to your Lordſhips, that he not only was told of this Traffick with the Suitors Money, but was foretold the Conſequences of it, the Danger of future Loſſes was pointed out to him, and Propoſals for preventing 'em were given him in Writing.

And who was it, my Lords, that made theſe Propoſals? Who gave him this Warning? One of the Maſters of the Court, One intereſted in the Traffick of the Suitors Money, a Gameſter at the ſame Table with the impeach'd Earl. Advice from ſuch a Hand muſt be ſincere and unſuſpected; nothing but Juſtice, or a ſtrong Apprehenſion of their common Danger, could have extorted it; nothing but the blindeſt Avarice could have prevented the Compliance with it. But what ſtill renders this Conduct more amazing is, that the impeach'd Lord had not the Advantage of a ſingle Propoſal only, and from a ſingle Maſter, but of ſeveral Propoſals, and from ſeveral of 'em. Mr. *Kynaſton* will inform your Lordſhips, *That he and other Maſters waited on the Lord Chancellor, and propos'd to give Security in Land, or Money, for their Caſh, and to make their Truſt leſs by putting the Securities in two Maſters Names, or in the Names of the Parties* and one of the Maſters, with which he then appear'd pleas'd, tho' he afterwards did nothing in it, and expreſs'd his Diſlike of the Propoſal. Yes, my Lords, the Propoſal was too reaſonable to be refus'd, and too ſelf-denying to be follow'd. So far was the unfortunate Lord from following it, or acting in any Manner conſiſtent with it, that ſoon after the Failure of Mr. *Dormer*, after theſe Propoſals were made to him, he ſells the Offices of ſeveral Maſters at moſt exorbitant Prices. And was this what my noble Lord ſets forth in his Anſwer, *as one of the Expedients he thought of, after* Dormer's *Misfortune, for preventing any Inconvenience, on the like Accident, for the future? Was this the only Method of Cure the noble Earl brought to ſuch Perfection, as to venture to put it in Practice.*

My Lords, the Gentlemen, embarqu'd in the ſame Bottom with this unhappy Lord, ſaw the Ship ſinking, and propos'd throwing over-board Part of their unjuſtifiable Gains, to prevent their general Wreck; but the impeach'd Earl does not only boldly ſteer on the ſame Courſe, but takes in Lading, more Weight of Guilt, if not in Defiance of the Danger, certainly in the Neglect of it.

And how, my Lords, does his Anſwer excuſe this Conduct? He admits that ſeveral Propoſals were made on that Occaſion, but *ſome he thought impracticable, ſome inſufficient, ſome inconſiſtent with that compleat Regulation he hop'd to make.* And becauſe ſome were inſufficient, ſome inconſiſtent, and not anſwering the full Idea of Perfection propos'd by his Lordſhip, Muſt therefore nothing be attempted? Muſt we have no Relief, becauſe we deſpair of an abſolute Cure? Muſt no Remedy be apply'd to a dying Perſon, becauſe it is not certain it will reſtore him to his perfect Strength? Thus far indeed is certain, It is much better to do nothing, than to continue ſuch Methods, as firſt brought the Diſtemper upon him. We muſt therefore leave it with your Lordſhips to judge, whether the Inconſiſtency of the Propoſals with the Earl's private Views was not the true Reaſon of their being thought impracticable and inſufficient. And what thoſe Views really were, the whole Tenor of our Evidence has, and will ſhew Views beneath the Dignity of his high Office, and far below a Member of this Auguſt Aſſembly.

My Lords, the Commons farther charge this unhappy Earl, *that he not only knew, but conniv'd at, and encourag'd this deſtructive Traffick:* And in anſwer to this, He ſays: " That he gave no " Permiſſion nor Encouragement to the Maſters " of the Court, to employ or traffick with the " Suitors Money." We have ſhew'd your Lordſhips, he knew it, and knew it in the moſt affecting Manner, by the Ruin it had produced. We need not ſhew you that He had Power to prevent it. And ſurely, my Lords, to know it and not prevent it, in his Situation, was to permit it. And as His not preventing it was a Permiſſion, ſo his Example was an Encouragement: And when the Maſters ſaw him (the greateſt Object in the Compaſs of their View) taking every indirect Method to make the moſt of *His High* Office; ſure, they muſt think that Example (join'd to the Neceſſity he *Himſelf* laid them under by the exorbitant Prices he exacted) a ſufficient Encouragement to authorize them in the like Practices *in theirs*. The Examples of great Men, my Lords, are Encouragements, and the Aſſembly I ſee before me is an illuſtrious Proof, they ought to be ſo, and will do Honour to thoſe who follow them: And from the Influence thoſe Examples have, and ought to have over the reſt of Mankind, it has been ſuppos'd, that the only Paſſage to Honour was through the Temple of Virtue; but, my Lords, tho' there be but one Paſſage to it, there are many from it; and ſo many are the Frailties of human Nature, that the Building would be imperfect, without a Back-Door to let out, whatſoever

fullies

ſullies or pollutes it: A Door, my Lords, your Anceſtors have open'd to former Lord Chancellors.

But we ſhall call our Evidence, and ſubmit the Whole with the greateſt Security and Satisfaction to your Lordſhips Judgment.

Mr. *Plummer*. I deſire Mr. *Lightboun* may be called.

[*Mr.* Lightboun *being called appeared*

Mr. *Plummer*. I deſired Mr. *Lightboun* may inform your Lordſhips, whether he had any Diſcourſe with my Lord Chancellor, about putting the Offices of Maſters of *Chancery* into a better Regulation?

Mr. *Lightboun*. My Lords, in order to anſwer this Queſtion it will be neceſſary for me to repeat ſome Part of the Account I gave when I was laſt at your Lordſhip's Bar. I then acquainted your Lordſhips, that in the Beginning of the Summer, in the Year 1722, the Lord *Macclesfield*, having directed me to attend him, told me that he had heard I had not contributed my 500 *l.* towards making up Mr. *Dormer*'s Deficiency, as the other Maſters had done; that he did not expect I would have ſtood out, and was ſorry to hear of it, as he had a more particular Regard to my Conduct than any of the reſt, becauſe I was the only Maſter of his immediate Choice; and on his Lordſhip's telling me that it was firſt propoſed by the Maſters, and not by his Lordſhip, I told him I was not willing to comply with it, and thought it a dangerous Expedient; that it might be hereafter looked upon as an Undertaking one for another, and therefore I would not come into it; and that as this Accident had happened to Mr. *Dormer*, the like might happen again to others, and might be the Ruin of us all, if ſuch a Conſtruction were put upon it. My Lord was pleaſed to ſay, it was the only Expedient he could think of for making good the Deficiency. I told him I had as much at Heart the doing of that as any Body; and that if a proper Expedient could be found out to pay Mr. *Dormer*'s Deficiency, and prevent the like Accident among us for the future, by putting the Offices on ſuch a Foot, that the Maſters might execute them with Honour to the Court and themſelves, and with Safety to the Suitors, I ſhould be glad to contribute to ſuch Regulations. His Lordſhip ſaid he ſhould be glad if any ſuch Thing could be thought of, and asked me, if I could think of any Method by which that might be done. I told him I believed I had, at which he expreſs'd great Satisfaction; and we being then ſtanding, his Lordſhip deſired I would ſit down. He then asked me, in what Manner it was that I propoſed the Suitors ſhould be made ſafe: I told his Lordſhip that I apprehended it was impoſſible to expect, that the Maſters could give a Security adequate to ſuch a Truſt; that there were many Inſtances of great Officers, whoſe Truſt was ſo great as to be above giving ample Security, particularly the Tellers of the *Exchequer*, and the Treaſurers of the *South-Sea* and *Eaſt-India* Companies: But if a competent Security were taken, and ſuch I apprehended might be given, I hoped it would anſwer the Intent, and give Satisfaction, ſince ample Security for ſo great Truſt could not be expected. I then told his Lordſhip, that if the Cauſes of Mr. *Dormer*'s Misfortunes were conſidered, they would be found not only to proceed from Squandering or Miſapplication of the Caſh, but from Power over the Securities in his Hands; for that the Money could not be ſo much, but the Securities amounted to a greater Sum. He ſaid it might be ſo, but how to prevent it he would be glad to know. I told his Lordſhip, that if the Securities, for the future, were to be taken in the Names of the Maſter, and one or more of the Parties, the Suitors would be ſafe. It was then obſerved, but whether by my Lord, or me, I do not remember, that an Objection might ariſe to this Method, for that if either the Maſter or the Party ſhould die, the Truſt would ſurvive; and thereby either the Court loſe its Power over the Security, or the Maſter's ſole Power over it be reſtored; but, to prevent that, I propoſed that they might be taken in the Name of two or three, or more of the Maſters, with or without the Perſons intereſted, as the Court ſhould think proper; and that it was hardly to be imagined that all the Maſters would betray their Truſt, and riſque their Fortunes to oblige any one, by ſuffering him to traffick with the Securities of the Court, taken in their joint Names; eſpecially, if Care was taken, that ſuch Maſter, as was to be joined, or be a Check upon another Maſter, ſhould have a Third to be a Check upon him. My Lord *Macclesfield* objected, That there was a great Number of *South-Sea* and *India* Bonds, and other Securities, payable to the Bearer, that could not be in the Names of any particular Perſons, and ſo could not be ſecured in that Manner; and that it would be troubleſome to lock them up. To which I replied, I knew no occaſion for putting out Money on *South-Sea* or *India* Bonds, or ſuch Securities, ſince there were other Securities ſufficient, which might be under a proper Reſtriction, and which were not partable, but are transferrable in Books at the *Bank*, or elſewhere, *viz. Stocks*, *Bank-Annuities*, *Civil-Liſt Annuities*, *Four per Cent Annuities*, *Land* and *Malt Tallies*, *and Lottery Orders*, which were aſſignable by Indorſement; and that, if theſe Securities were taken in the Names of ſeveral Perſons, it would be impoſſible for any one Perſon to diſpoſe of them, without the Knowledge and Conſent of all. My Lord expreſſed great Satisfaction at this Propoſal; and then asked me, in what Manner Mr. *Dormer*'s Deficiency would be provided for? I then acquainted his Lordſhip, that there was always a conſiderable Caſh in each Maſter's Hands; and that if ſome Part of that was placed out at Intereſt, in the Name of all the Maſters, it would be no Injury to the Owners, if it was ready, when called for; and the Produce would raiſe a Fund to pay Mr. *Dormer*'s Debt; and that it was very likely the Lords of the Treaſury might, on ſuch an Occaſion, give us the Preference, and let us chuſe a proper Part of the Loans on the Land and Malt-Tax, to lend the Money upon; that if any Maſter wanted any Part of the Money he had placed out on that Occaſion, to anſwer the Suitors Demands, ſuch Securities were eaſily converted into Money. I was

unwilling to fix any Sum for each Maſter to advance; but believe I did mention 3, 4, or 5000 *l.* for his Lordſhip's Conſideration; and took Notice that would amount to 40 or 50000 *l.* and would, in due Time, raiſe a Sum of Money ſufficient to anſwer the Deficiency of Mr. *Dormer*. My Lord made ſome Doubts; but ſaid he would be exceeding glad to give his Aſſiſtance; but was afraid he could not properly order the Suitors Money to be laid out, but for their Benefit whoſe Money it was. I ſaid, I thought that might be done without any Order, if his Lordſhip approved it, and the Maſters all came into it, and placed it out in all their Names; and that at any Time, by diſpoſing of the Security taken for it, the Money might be raiſed, when wanted. My Lord made ſome Doubt, whether it could well be done; but was pleaſed with the Propoſal: And many other Things were ſaid, which I cannot, at this Diſtance of Time, recollect. I had, my Lords, two Views in it, but won't be poſitive that I mentioned them to my Lord. I apprehended it would not only raiſe a Fund to pay Mr. *Dormer*'s Debt; but that it would diveſt each Maſter of the Power over 5000 *l.* of the Suitors Money, which he had in his Hands. I alſo took Notice, that if ſome ſmall Security was taken from the Maſters, but am not certain that I mentioned any Sum; but believe I might ſay 5000 *l.* and that ſuch a Security, with our Offices, valued at about 5000 *l.* a-piece, would, with the Money placed out for the Payment of Mr. *Dormer*'s Debt, be a Security for the Money in our Hands, were we but diveſted of the Power over the Securities, which was four Parts in five of the Truſt: And tho' 15000 *l.* will not anſwer the Money which a Maſter may ſometimes have in his Hands; yet, where a Man gives a Security for 14 or 15000 *l.* he'll ſcarce run away for 20000 *l.* This, I thought, might be of Service to the Publick, and deſired my Lord to conſider of it: And his Lordſhip ſaid, that ſomething might be graſted on this Plan; and deſired me to put it in Writing. I told his Lordſhip, I did not know, whether this Scheme might be agreeable to every Body; that I came into the Office but very lately; and that it was neceſſary for me to have a good Correſpondence with my Brethren; and that I was afraid, if it ſhould be known that I propoſed any thing without their Privity, I ſhould be uſed more unkindly among them than I had already been; and therefore hoped his Lordſhip would not let them know, that it was my Propoſal, nor ſhew them any thing of mine in writing; and took my Leave of my Lord at that Time. The other Maſters knew I had been with my Lord; but I did not communicate the Occaſion of my going to him, or the Propoſal; but I ſounded the reſt of the Maſters, how any Propoſal of this Kind was agreeable to them: Moſt of them were averſe to it, particularly that of diveſting them of the Securities; becauſe that ſhew'd a Diſtruſt of them, and, they ſaid, would diminiſh the Reputation of the Office. They were againſt placing out any ſuch Sum as 5000 *l.* ſome were rather willing to contribute annually, than to pay ſuch a Sum of Money down: And finding them averſe to it, I was a little cautious how I put this Propoſal into Writing. It was near a Month before I ſet about it; and then did it by way of Letter, in which I took Notice in the Beginning, that it was in Obedience to his Lordſhip's Command.

Mr. *Plummer*. I beg Pardon for interrupting the Witneſs; I deſire he may be asked, if he did not ſend that Letter to my Lord *Macclesfield*?

Mr. *Lightboun*. I wrote a Letter, to the ſame Purport or Effect with what I had propoſed, except in ſome Inſtances which I found other Maſters averſe to, and was cautious of carrying it too far; and believe, inſtead of 5000 *l.* to be placed out, I only mentioned 2000, or ſuch other Sum as ſhould be agreed on. And though I mentioned a larger Sum, when I was with my Lord, and a ſmaller by Letter, I left that to my Lord's Direction, as his Lordſhip ſhould think neceſſary. I don't remember, or believe, that I took notice in my Letter of the ſmall Security I propoſed to be taken, the rather, becauſe the Maſters differed much in their Thoughts about that: Some of them were for giving none; therefore I ſaid nothing of it. I thought that was my Lord's Province more than mine; but I ſtuck the more cloſely to that of placing out of the Money, for Payment of Mr. *Dormer*'s Deficiency, and taking the Securities in ſeveral Maſters Names. And when I had writ the Letter, I ſent it to my Lord about *June*, or *July*, 1722, by my Clerk, who told me he delivered it to my Lord's Servant.

Mr. *Plummer*. I deſire to know, if he kept any Copy of that Letter?

Mr. *Lightboun*. I kept the original Draught, which I apprehend I writ the Letter from. I can't ſay it is an exact Copy; becauſe in tranſcribing, I might alter Words which I diſliked, and put in others; and therefore I am not ſure it is a true Copy; it may vary in Form, but not in Subſtance.

Mr. *Plummer*. I deſire he may be asked, whether ever he ſpoke to my Lord about it, and that my Lord acknowledged the Receipt of this Letter?

Mr. *Lightboun*. My Lords, I think I did ſay, in the Preſence of ſome of the Maſters, when my Lord talked of taking Security in ſeveral Maſters Names, that, if his Lordſhip would look into the Letter I writ to him at ſuch a Time, he would find that Propoſal made: I don't remember my Lord made any Reply, he did not deny it. But not long before *Chriſtmas*, my Lord did mention this Letter to me, upon this Occaſion: When I was paſſing my Accompt before the Judges, and the Directors of the *Bank*, I had told them of this Letter; which his Lordſhip, having heard of, asked me, what I had ſaid about it? I told his Lordſhip, I had acquainted them with the Contents of the Letter I wrote: Says He, I have that Letter by me.

Mr. *Plummer*. I deſire Mr. *Lightboun* may produce the Letter.

Mr. *Lightboun*. My Lords, I have not the Letter.

Mr. *Plummer*. The original Draught you mention.

[*Mr.* Lightboun *produces the Draught.*

Mr.

Mr. *Plummer*. Is that your own Hand-writing, and the Subſtance of the Letter you ſent to the Lord Chancellor?

Mr. *Lightboun*. It is my Hand-writing, and the Subſtance of that Letter.

Mr. *Plummer*. I deſire it may be read.

[*Mr.* Baily *reads the Draught.*

My LORD,

IN Obedience to your Commands, I here lay before your Lordſhip my Thoughts upon the Affair you were pleaſed to mention, when I had laſt the Honour to wait upon your Lordſhip; and muſt own, that a Proviſion, for the Demand upon Mr. *Dormer*'s Office, might anſwer our preſent Purpoſe: But, with great Submiſſion, I think it concerns the Honour of the Court of *Chancery*, to find out ſome proper Expedient to prevent the like Accident for the future: And I beg Leave to obſerve, *that the great Difficulty, which this Gentleman has brought upon himſelf and the* Court, *proceeds not only from his Squandering or Miſapplication of the Court Caſh in his Hands (were that all, his Eſtate and Office would much more than have anſwer'd the Demand) but I am afraid it is too obvious, that his Power over the Government Securities, that had been transferr'd to, or brought before him, or upon which he had placed out the Money of the Suitors of the Court in his own Name, has been the Occaſion of this great Deficiency, which I hope may be provided for, and the Credit of the Court retrieved and ſupported, by every Maſter's advancing* 2000 *l. or ſuch other Sum as ſhall be agreed on, out of the Caſh of the Court in his Hands; which being placed out at Intereſt, the yearly Income thereof, together with the Produce of Mr.* Dormer's *Eſtate, will anſwer the Demands that may be expected on his Succeſſor; and will, in due Time, make good the Debt upon the Office*, provided the Money that has already, or may hereafter be raiſed, from his Eſtate, or any other Way, for that Purpoſe, be forthwith apply'd to diſcharge ſuch Demands as carry Intereſt, or be inveſted in ſuch Securities as have been diſpoſed of by Mr. *Dormer*, belonging to the Suitors, to anſwer the ſame and the accruing Intereſt, which I hope the *Gentleman that ſucceeds him has already taken Care of, if not, the Demand will rather encreaſe than diminiſh*

And having before obſerved, from whence this great Deficiency has aroſe, I ſubmit it to your Lordſhip, whether the taking all Government Securities for the future, in the Name of two or more Maſters, may not prevent the like Misfortune hereafter: And *the Depoſit to be put out to Intereſt, to raiſe a Fund for the Payment of Mr.* Dormer's *Debt, together with our Office, wou'd in a great Meaſure, be a Security for the Caſh with which we ſhould then only be intruſted.*

I expect it will be objected, againſt the Depoſit, that ſome Maſters may not always have that Sum in their Hands; but *I will venture to ſay, 'tis ſcarce probable that can happen, if the Money be directed as uſual, to be brought before the Maſters, both by* Your Lordſhip *and the Maſter of the Rolls, without which the Maſters can't think themſelves much intereſted in the Event of Mr.* Dormer's *Affair.*

It may alſo be objected, that the Alteration, propoſed, in the future taking Government Securities, will ſhew a Diſtruſt, and cauſe Reflections upon the Maſters; but I ſhall think it a Happineſs, to be diveſted of a Power never to be uſed, without the greateſt Violation of the Truſt repoſed in us that can well be imagined; and I think it evident, that it had been a much greater, if we had never been intruſted with it; and as this Variation may be begun by ourſelves, without any publick Direction or Alteration in future Orders, I think it will rather turn to our Reputation than Diſadvantage, and will certainly eaſe the Minds of the Suitors, which ought to have ſome Conſideration in this Affair. I am unwilling to treſpaſs longer on your Lordſhip's Time; but if *I have the Happineſs to have offered any thing thought practicable by your Lordſhip, when I have the Honour to be admitted to wait upon you, I hope to ſatisfy your Lordſhip, that I ſhall, with Pleaſure, contribute, as becomes me, to facilitate any Undertaking* of this Kind. And that I have as much at Heart the Reputation of the Office I had the Honour to be placed in by your Lordſhip, as any of my Brother Maſters. But as we have different Views, it is not ſurprizing that we think not alike; which makes me fear that nothing of this Kind will be approved of, unleſs recommended by your Lordſhip; and am,

My LORD,

July 19. 1722.

Your Lordſhip's

Moſt obedient Servant,

J. LIGHTBOUN.

Mr. *Plummer*. What Date is it?

Mr. *Lightboun*. I did not expect, when I wrote this Letter, that I ſhould have been called upon to give any Account of it, and did not put any Date to it; but, to the beſt of my Knowledge, it was in *June*, *July*, or *Auguſt*, 1722; but it is from Circumſtances I recollect that, rather than from any Remembrance I have of the exact Time.

Mr. *Lutwyche*. I only deſire that Mr. *Lightboun* may recollect the Time, when he firſt mentioned this to my Lord *Macclesfield*, and this Letter was taken Notice of to him?

Mr. *Lightboun*. Indeed, my Lords, I cannot do that. I believe it was at a Meeting of ſeveral of the Maſters, at my Lord's Houſe. I often had the Honour to be admitted to him, with or without other Maſters. His Doors and Ear were always open to me; and I was often troubleſome to his Lordſhip. But I cannot recollect the Time, when this was firſt mentioned.

Mr. *Plummer*. I think he ſays the Maſters might have different Views. I deſire he would explain himſelf, what he meant by that?

Mr. *Lightboun*. I meant by that to put my Lord in mind of what I had ſaid, when I had the Honour to be with him laſt, when his Lordſhip told me, that the Propoſal of a Contribution came from the two ſenior Maſters, I then ſaid that their Deſign was only to skin over this Wound, till they could get out: That one of them had ſlipp'd

his

his Neck out of the Collar already, and another was about getting out. I told his Lordſhip, that, as I was but lately come into the Office, I propoſed to ſpend my Days or wear myſelf out in the Service of the Court. Therefore, that their Deſign was to get out, and mine to continue in, was what I meant by different Views.

Mr. *Plummer.* Mr. *Lightboun* hath given your Lordſhips an Account of his Propoſals and Arguments uſed with my Lord Chancellor; I deſire to know, whether he uſed any other Inducements to perſuade my Lord to make ſome Orders relating to the Maſters?

Mr. *Lightboun.* It was a long Time before I heard any more of this Affair. As they were quiet, without any Application to me for the 500 *l.* or to come into any Contribution, which I was reſolved againſt; ſo I did not think it prudent for me to make any Buſtle amongſt my Brethren. I thought I had done my Duty, I had given my Opinion when it was required, and I did not ſtir in it till the Maſters apprehended themſelves very much aggrieved, by the Variation the Maſter of the Rolls was pleaſed to make in the Practice of the Court, by directing all the Money of the Suitors to be brought before his Uſher, and ſometimes to be put out by him without the Maſters Approbation; which not only deprived the Maſters of any Advantage from thence, but of thoſe Fees that were due to them, on the receiving and placing out at Intereſt, or paying it out again; and, as I took it, it no Way anſwered the End, nor was for the Benefit or Security of the Suitors: Becauſe if the Truſt was too great, and the Suitors Property not ſafe in eleven Men's Hands, much leſs was it ſafe in the Hands of one. Therefore I apprehended there was Reaſon for Complaint. On this Account we had ſeveral Meetings; I was always ready to come into any Repreſentation to my Lord, in hopes that Grievances of all Kinds might be looked into, and, I believe, often complained to my Lord of theſe Matters. We went to my Lord Chancellor, and acquainted him of our Grievances; my Lord deſired us to put them into Writing, we all readily concurred in that: Accordingly we drew up our Complaints of theſe, and other Incroachments on our Offices, by Way of Repreſentation, which was delivered to my Lord Chancellor, and after my Lord had had it ſome Time, and nothing done, we frequently importuned my Lord, to conſider the declining State of our Offices; and, I concluded, that would bring the other Matters on the Stage, without which, nothing effectual could be done. My Lord ſaid he would have a Conference with the Maſter of the Rolls, and the Maſters, in order to debate theſe Matters; and I did not doubt, but, upon that Occaſion, the Deficiency of *Dormer*'s would come out, and that ſomething might be done for us, conſiſtent with the Honour of the Court, and the Suitors Safety. But that Conference was delayed; the Grievances in all Reſpects grew greater; we grew more troubleſome to my Lord Chancellor; my Lord then ſaid, there was a Neceſſity of redreſſing all the Grievances; he mentioned the Maſters giving Security, that of taking Securities for the Suitors in other People's Names, and continuing the Maſters in the Enjoyment of their Offices, as they had uſed to have them, and ſaid it would be beſt to do all together. With this we were put off for ſome Time, but, on further Sollicitation, my Lord ſaid, he was now determined to do ſomething in this Affair, and his Lordſhip deſired a more particular Account of the Grievances complained of by the Maſters, and their Reaſons, and the Inconveniencies to the Suitors that accrued from the new Methods, which the Maſter of the Rolls had turned the Buſineſs of the Court into; and that the Matter, both with reſpect to the Suitors and the Maſters, might be fully underſtood, his Lordſhip preſſed, that ſomething of that Kind might be drawn up in Writing and laid before him, and he would make Orders proper to make a thorough Reformation in the Court: And, I remember his Expreſſion to me was, It would ſave him much Trouble, if what was drawn up by the Maſters, not only contained the Things which they had Grounds to complain of, but was put into the Form of Orders neceſſary to be made, for him to conſider of, and alter, and add ſuch others as he had prepared, or thought neceſſary. And ſoon after, a ſecond Repreſentation was prepared and was delivered to my Lord. And after his Lordſhip, had had it ſome ſhort Time, there was a Meeting at my Lord Chancellor's, where the Maſter of the Rolls and the Maſters were preſent, and at that Time there was a good deal of Diſcourſe about the Money. But when the Maſter of the Rolls began the Topick of his Juriſdiction, excluſive of the King's Commiſſion, Heats aroſe, and little was done at that Meeting. I think ſome Perſons of Quality came to ſpeak with my Lord, and that broke it up. I was ſoon afterwards with my Lord, and I asked his Lordſhip what he intended to do: He ſaid he was ſorry Matters were got to that Heighth, but that he found if the Maſters would give up the Judicature, they might be made eaſy in their Demands, and Things put upon the old Foot, and the Suitors made ſafe too; upon that Occaſion, I did take the Liberty to ſay, if there was a judicial Power in the Maſters by Vertue of the King's Commiſſion, as it was his Majeſty's Prerogative to grant, we could not give it up; and that, for my Part, I would not exchange or barter it for the Cuſtody of the Suitors Money. I believe my Lord propoſed, at this Meeting, to have had the Aſſiſtance of the Maſter of the Rolls in making theſe intended Orders; and I recollect, that after the Deficiency of this laſt Repreſentation, which I was preſent at, I heard that my Lord had ſhewn it to the Maſter of the Rolls before the Meeting, which I took amiſs, my Lord deſiring it for his own private Uſe: Upon which I went to him in order to withdraw it, and told him it was done in ſuch Haſte, that all the Maſters had not conſidered it; but whether I alledged to him, or He to me; I don't remember. but it was ſaid, that it was very proper the Maſters ſhould all ſign it; and I think I carried it back to the Maſters, and that we all ſigned it; and then it was delivered back to my Lord. And, I believe, upon the Face of that Repreſentation it will appear, that it was drawn up at my Lord Chancellor's Requeſt.

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The firſt Repreſentation was chiefly confined to ſuch Grievances as affected our ſelves, the ſecond is more at large; I don't know whether his Lordſhip will produce it. Some things in it may ſeem to bear hard upon his Honour the Maſter of the Rolls, and may give Offence; but it will be conſidered, that it was written at a time when there were great Differences between the Maſter of the Rolls and the Maſters. Nay, I think I may ſay, the whole Court of Chancery was in a State of War.

Mr. *Plummer*. I deſire he may be asked, if he ever laid before my Lord Chancellor, the Expectations of the World, that he would reform theſe Abuſes and Grievances?

Mr. *Lightboun*. I have often mentioned that to my Lord, and preſſed it rather more and oftener than became me. I was aſhamed to be ſo troubleſom, and I was ſurprized that my Lord did not do ſomething in it; tho' I ſoon found, and have often told one or other of the Maſters and others, that my Lord would do nothing in it. However, I continued to perſevere in preſſing it; and expreſly mentioned the great Inconveniencies the Court would be run into, for want of a proper Regulation, and with what an ill Grace we could apply to his Succeſſors to redreſs theſe Grievances, in Caſe his Lordſhip grew weary of the fatigue of Buſineſs, and quitted the great Seal; that they would tell us, we had long acquieſced under them, and that his Lordſhip not having ſo much as looked into them, they would not care to meddle or interfere in it. I preſſed it home to his Lordſhip, and thought he made Doubts and Difficulties where there were none. Indeed I thought in this his Lordſhip wanted his uſual Reſolution, and almoſt ventured to ſay ſo (tho' I know not whether it is very proper to mention it) but I did take the Liberty to tell his Lordſhip, that if he did not redreſs theſe Grievances, unleſs my Lord *Lechmere* ſucceeded him, I deſpaired of ſeeing them ſettled on any better Foot. I hope my Lord will pardon my mentioning his Name.

Mr. Serj. *Pengelly*. My Lords, We have done with Mr. *Lightboun*.

Mr. Serj. *Probyn*. I deſire he may be asked, when the firſt Application was made by the Maſters to redreſs their Grievances?

Mr. *Lightboun*. I really can't tell. I went ſo frequently to my Lord, that I cannot diſtinguiſh one time from another; I believe other Maſters that went ſeldomer can tell better; but I believe it muſt be a Year and a half, or 2 Years ago, or more: I cannot tell the Time.

Mr. Serj. *Probyn*. I deſire he may be asked, whether there was any ſecond Application, before the Repreſentation was put into Writing?

Mr. *Lightboun*. Immediately upon the Maſter of the Rolls's varying the Method of the Court, and Directing the Money to be paid into the Uſher, the Maſters went to my Lord Chancellor's, which I believe muſt be before *Chriſtmas*, 1722. I believe Mr. *Holford* remembers it better; and that from time to time, I have often told him that my Lord Chancellor would do nothing in it.

Mr. Serj. *Probyn*. I deſire to ask him, when that meeting was between the late Lord Chancellor and the Maſter of the Rolls?

Mr. *Lightboun*, That I believe was the beginning of laſt Summer.

Mr. Serj. *Probyn*. We deſire he may ſay who was then preſent at that meeting with the Maſter of the Rolls?

Mr. *Lightboun*. My Lords, At that meeting with the Maſter of the Rolls the Lord Chancellor was there, had the great Seal before him; and the two Senior Regiſters were there, with Pen Ink and Paper before them, in proper Habits, the Maſter of the Rolls, and all the Maſters in their Gowns, and the Secretary was there, and the Maſters all hoped the Orders were to be then pronounced; but I can't remember that the Regiſters ſet Pen to Paper. The Uſher was likewiſe there.

Mr. Serj. *Probyn*. I deſire he may, if he can recollect it, give a particular Account of what paſſed at that meeting.

Mr. *Lightboun*. The Maſters inſiſted they had a Right by Cuſtom to have the Money brought before them, where there was any Reference to a Maſter, whether it was by Orders made upon hearing, or by Interlocutory Orders, or if there was a Direction in that Order, by which the Money was brought in for the Payment, or Application of it; in theſe Caſes they alledged, that the Money had, time out of Mind, been brought before the Maſter, to whom the reference was directed; and they did admit, that where Money was brought in upon Bills of Interpleader or Interlocutory Orders, where there was no Reference to a Maſter, the Money had uſually been directed to be brought into Court, in Order to be kept till it could be determined whoſe it was, or to what Uſe it was to be applied; and there they admitted the Money was formerly kept by the Uſher. This I apprehended was inſiſted upon by the Maſters as their undoubted Right, and it was expected an Order would have been then made declaring it ſo.

Mr. Serj. *Probyn*. I deſire to know what further paſſed relating to Facts only, without any Account of his own Expectations?

Mr. *Lightboun*. Some Debate aroſe about the Maſter of the Rolls's Judicature, ſtarted I think firſt by himſelf.

E. of *Macclesfield*. I deſire to put Mr. *Lightboun* in Mind of ſome things, and firſt to ask him, whether upon that Application they had made to me in relation to the Alteration or Variation, as he calls it, in the Practice of the Court, by the Orders made by the Maſter of the Rolls, whether I did not require them to lay Precedents before me, that I might be ſatisfyed how that Matter ſtood?

Mr. *Lightbourn*. Your Lordſhip did, but it was long before that meeting, I believe a Year and more.

E. of *Macclesfield*. Whether there had not been like Directions, that the Uſher ſhould lay Precedents before me?

Mr. *Lightboun*, I don't know of any ſuch Directions to him, but I remember my Lord Chancellor called for his Precedents, and wondred he had not brought them, if he had any for his purpoſe.

E. of *Macclesfield*, I deſire Mr. *Lightboun* may recollect whether the queſtion was not put to the Uſher, with relation to the Uſage of the Court, to put the Money into the Maſters Hands, in all Caſes where the Money was brought into Court, to be diſpoſed of, either to be put out at Intereſt, or paid to Creditors, or Legatees, whether he had any one Precedent to the contrary?

Mr. *Lightboun*. I remember he had none, and I apprehended the Uſher did not make out any ſort of Claim to keep ſuch Money.

E. of *Macclesfield.* I don't ask what the Uſher made out, but what Queſtions were asked him about the Uſage and Precedents.

Mr. *Lightboun.* I believe they were asked for, and I am ſure he then produced none.

E. of *Macclesfield.* Pray recollect, and conſider; did I ſpeak to him, as to one that had not any Precedents to produce; or did I make mention as if he had brought Precedents, and ask him if he could ſay, that among thoſe Precedents there was one to the Purpoſe, to make out that the Uſage was not ſo?

Mr. *Lightboun.* I ſay your Lordſhip blamed him for not bringing theſe Precedents. I believe your Lordſhip asked him, if he could bring any Precedent to the Point? and, to the beſt of my Remembrance, he ſaid he had none, or gave no ſatisfactory Anſwer, but ſuch as I thought Evaſive; but I cannot remember particularly what your Lordſhip and he ſaid to each other.

E. of *Macclesfield.* This is a very indifferent Account; ſince Mr. *Lightboun* hath ſo good a Memory, I deſire to know whether the Uſher was not told, that his Precedents had been read, and poſſibly might have overlooked ſome that were Material; and therefore deſired him to ſhew whether there was among them any one Precedent, that related to Money brought in, in theſe Caſes?

Mr. *Lightboun.* He produced none.

E. of *Macclesfield.* Did it not appear that he had produced Precedents before, and they had been read, and that poſſibly I might have overlooked ſome of them?

Mr. *Lightboun.* On your Lordſhip's mentioning of it, I do recollect ſomething did appear, that your Lordſhip had ſeen his Precedents, and did expect he ſhould have brought more.

E. of *Macclesfield.* I deſire he may be asked whether he did pretend he could produce more?

Mr. *Lightboun.* My Lords, I cannot be particular in that.

E. of *Macclesfield.* I deſire to know whether he did not own that he had no ſuch Precedents?

Mr. *Lightboun.* In Anſwer to that, my Lords, I cannot ſay poſitively he did or did not; for I believe I have ſeen ſome few Orders of antient Dates, that were Precedents of Money being brought into the Uſher's Hands, in Order to be diſpoſed of after hearing. But there were but few of them.

E. of *Macclesfield.* My Lords, I deſire Mr. *Lightboun* may be asked whether the Regiſters were not asked about the Practice of the Court and if in all their Obſervation and Experience the Money in the caſes before ſpecified was ordered to the Uſher?

Mr. *Lightboun.* They were, my Lords.

E. of *Macclesfield.* And what Anſwer did they make?

Mr. *Lightboun.* They anſwered, that the Money, after hearing, and on interlocutory Orders, where the Application was directed, had been uſually ordered to the Maſters.

E. of *Macclesfield.* I deſire Mr. *Lightboun* may be asked, whether it was not after this, that the Maſter of the Rolls began to ſpeak with relation to the Judicature, and how that was introduced?

Mr. *Lightboun.* I have forgot the Circumſtances and Manner of its being introduced by the Maſter of the Rolls. But I remember one Expreſſion of his Honour's, That he would have the Maſters conſider how proper it was for them to inſiſt upon a Judicature, which would impower them to order Money into their own Hands. But how he introduced that Diſcourſe I don't know; but I ſaw the Lord Chancellor had not a Mind that Topick ſhould be touched upon, and that the Maſter of the Rolls brought it in much againſt his Lordſhip's Inclination; but how I don't remember. If your Lordſhip puts me in mind, I may recollect.

E. of *Macclesfield.* The Uſher, was not he apprized of this meeting?

Mr. *Lightboun* Yes.

E. of *Macclesfield.* Did the Maſter of the Rolls give any Opinion relating to this Matter of the Money being paid to the Uſher?

Mr. *Lightboun* He inſiſted on his own Judicature, and both introduced and ſtuck to that Diſcourſe.

E. of *Macclesfield.* Do you remember his ſaying that the Maſters muſt not expect favour at the Rolls, if they contended for Juriſdiction?

Mr. *Lightboun.* My Lords I do not.

E. of *Macclesfield.* You ſpoke of my irreſolution: Was it not with reſpect to the Diſpute between you and the Maſter of the Rolls?

Mr. *Lightboun.* I could not tell where it ſtuck, there was ſome Difficulty made of determining that Matter; but your Lordſhip did not communicate to me your Reaſons why you did not proceed upon that or any other of the Maſters Affairs.

E. of *Macclesfield.* I preſume, Mr. *Lightboun*, you did not every time you came to me, ſpeak to me of the Affairs wherein the Maſters thought themſelves hurt?

Mr. *Lightboun.* No, my Lord, I did not.

E. of *Macclesfield.* You ſometimes ſpoke to me about the Money, and at other times relating to the Maſter of the Rolls; I deſire to know, when you applied to me with reſpect to the Diſputes with the Maſter of the Rolls and the Innovations made on your Offices; if it was not upon that you found me irreſolute?

Mr. *Lightboun.* Your Lordſhip always ſaid it was proper to ſettle all at one time, that ſome ſecurity ſhould be given by the Maſters, and ſomething done to make it reaſonable to expect it from them; which was to eſtabliſh the Maſters in their juſt Rights, and upon that occaſion your Lordſhip mentioned taking Securities in different Perſons Names, and upon that Score the old Propoſal of mine was revived.

E. of *Macclesfield.* I have no further Queſtion to ask.

Mr. Serj. *Pengelly.* My Lords, we deſire Mr. *Holford* may be called.

Mr. *Holford* called.

Mr. Serj. *Pengelly.* My Lords, We deſire Mr. *Holford* may be asked, whether at any time, and when, he heard of a Propoſal made by Mr. *Lightboun*, and whether it was made publick?

Mr. *Holford.* My Lords, a good while ago, I believe two or three Years, Mr. *Lightboun* and I had a great deal of Diſcourſe about the Condition and Circumſtances the Court of Chancery was then in; and about the Confuſion that was like to happen by the unfortunate Accident that had happen'd to Mr. *Dormer*. We did talk of a great many things that were proper to remedy it. A great many were the ſame that are mentioned in the Letter that hath been read. I think I told him, it was very right, eſpecially as to the matter of the Securities, which was the greateſt power a Maſter was truſted with; for, as the Securities were above three Parts in four of the whole truſt, if there could be

a way found out to ſecure that, it would be a taking away three Parts in four of our Truſt; and conſequently would not leave ſo great a Power in the Maſters; but as long as they were taken in the Name of one Perſon, and no truſt declared, he could diſpoſe of thoſe things, and no body could hinder it. Therefore I thought it proper to be taken in two or three Names. I believe when it was propoſed to be in two Maſters, it was mentioned there might be a third, and then no harm could happen to the Suitors, unleſs Corruption ran through the whole Office. I remember ſometime after, that Mr. *Lightboun* did ſhew me the rough Draught of this Letter, which he ſaid he had ſent to my Lord; and we read it over together at my Houſe: I told him, it was very right, and that he had put it upon as good a Foot, as upon the firſt Conſideration it could be put upon: That every new Method was liable to Inconveniencies, but for my part I thought it looked fair, in that, as to the Matter of the Securities, the Money in the Maſters Hands was left pretty much to the Direction of my Lord Chancellor.

Mr. Serj. *Pengelly*. I deſire he may be asked, whether theſe Propoſals that were made were agreeable to him, ſo far, that if they were directed by my Lord Chancellor, he would have ſubmitted to them?

Mr. *Holford*. Yes, my Lords, I ſhould have readily ſubmitted to them.

Mr. Serj. *Pengelly*. I deſire he may be asked, whether he remembers any Diſcourſe of theſe Propoſals before my Lord Chancellor in his Preſence?

Mr. *Holford*. I don't remember I ever had the Honour of ſpeaking to my Lord Chancellor about any of them; nor to have been at any meeting where they were ſpoken of before my Lord Chancellor.

Mr. *Lutwyche*. My Lords, I deſire he may be asked, whether he can recollect when he had this Diſcourſe with Mr. *Lightboun*, and when this Draught of the Letter was ſhewn him?

Mr. *Holford*. About two Years ago; ſome time after it had been written, and ſent to my Lord, Mr. *Lightboun* told me, ſays he, I have writ to my Lord to the Effect of what we talked of; and I will ſhew you the Letter; and he pulled out the Copy and ſhew'd it me.

E. of *Macclesfield*. Was you at that meeting which Mr. *Lightboun* hath mentioned, when the Maſters and the Maſter of the Rolls were there? And what paſſed, as near as you can remember?

Mr. *Holford*. My Lords, I think it was upon Midſummer Day, if I remember right, and the Maſters, the Uſher, the Regiſters, and the Maſter of the Rolls, were all there. My Lord Chancellor declared there had been ſome Diſputes in the Court of Chancery, and he had called them together to adjuſt thoſe Diſputes, eſpecially in relation to the Money of the Court. I believe the Uſher was called upon to know whether he had any Precedents to offer in Juſtification of his own Right, or of what he claimed as a Right? and the Uſher, I think, ſaid at that time, he had no more than he had already delivered to his Lordſhip; I believe his Lordſhip ſaid thoſe Precedents were not much to the purpoſe; the Uſher ſaid he had no more, and delivered no more; and after ſome Diſcourſe, there were ſeveral People ſpoke, the Uſher inſiſting there were ſome Precedents to the purpoſe. Then a Diſpute aroſe about the Juriſdiction of the Maſter of the Rolls; and ſo the Affair broke up at that time. I think nothing more was done.

Mr. Serj. *Pengelly*. My Lords, we deſire that Mr. *Kinaſton* may be called.

Mr. *Kinaſton* called.

Mr. Serj. *Pengelly*. My Lords, We deſire that Mr. *Kinaſton* may give your Lordſhips an Account, whether he knows of any Propoſal made to the Earl of *Macclesfield*, relating to the ſecuring the Effects of the Suitors?

Mr. *Kinaſton*. Yes, My Lords, I do; there were ſeveral Meetings among the Maſters privately before they came into an Agreement. I think they all did agree, that they would go to my Lord *Macclesfield*, and propoſe to him to give Security, and to ſettle the Matter of the Securities ſo, that it ſhould not be in the Maſters power to diſpoſe of them. I remember it was agreed upon, that it ſhould be ſo repreſented to my Lord, and I believe all, or moſt of the Maſters, went to my Lord *Macclesfield*, and did propoſe it to my Lord. I am very poſitive ſome Propoſals were laid before him. Some propoſed to get People to be bound with them, but there might be ſome Difficulty in that; others propoſed that they ſhould give Land Security, but it was thought likewiſe that might meet with Difficulties in relation to the Title.

Mr. Serj. *Pengelly*. Was there any Propoſal made as to the Securities in their Hands?

Mr. *Kinaſton*. Yes.

Mr. Serj. *Pengelly*. In what manner was it propoſed that the Securities ſhould be taken?

Mr. *Kinaſton*. I am not poſitive, but it was to this purpoſe; they ſhould be put in one or two of the Maſters Names, and of the Perſons concerned. I am not certain how that was, but it was ſomething of that Kind.

Mr. Serj. *Probyn*. My Lords, I beg leave to ask this Witneſs when this was?

Mr. *Kinaſton*. I do not remember the time exactly. I believe it was ſometime about *Chriſtmas* was twelve Month.

Mr. Serj. *Pengelly*. My Lords, We ſhall call no further Witneſſes upon this particular Article; but beg leave to refer to your Lordſhips recollection of what paſſed Yeſterday, from the Examination of all the Maſters, relating to the Encouragement and Inducement that proceeded from my Lord *Macclesfield*, to the Maſters, to perſuade them to make up *Dormer*'s Deficiency, if their Offices ſhould be eſtabliſhed on their old Foot; which ſufficiently proves the Notice the Earl had of their Trafficking and dealing with the Money belonging to the Suitors of the Court. In the next place we ſhall lay before your Lordſhips an Order, made by the Earl of *Macclesfield*, of the 17th. of *December*, 1724. Tho' as to the ſeveral Propoſals made to his Lordſhip by the Maſters, he doubted of the Power he had to make any Order, yet when it was too late, or after the Loſſes had happened, when the Affair of this great Deficiency appeared, then doth he make an Order, that looks with ſome Care, but with this Introduction, that it was not ufual for the Maſters to give Security; tho' it appears to your Lordſhips that they had offered it, and were willing to do it.

Mr. *Ralph Paxton* proves the Order.

Clerk reads, *Ordo Curiæ Jovis Decimo Septimo die Decembris*, 1724.

WHereas his Majeſty has been pleaſed to appoint a Committee, of ſeveral Lords and others, of his moſt Honourable Privy Council; to make ſome Inquiries concerning the Court of Chancery,

Chancery, and particularly concerning the Monies of the Suitors of that Court, in the Hands of the Maſters or other Officers of that Court, and to conſider which way the ſame may be beſt ſecured; and the Lord Chancellor having at their Deſire ordered the ſeveral Maſters to give in their reſpective Accompts, which they accordingly did; and Mr. Baron *Gilbert*, Mr. Juſtice *Denton*, and Mr. Juſtice *Raymond*, and likewiſe Sir *Nathaniel Gold*, Mr. *Thompſon*, and Mr. *Hanger*, three of the Directors, and one of them Deputy Governor of the Bank, having been appointed and deſired by the ſaid Committee, to inſpect and examine the ſaid Accompts, and who have proceeded ſo to do, and after having been ſeveral Times attended by the ſaid Maſters, have made a Report thereof to the ſaid Committee of Council; whereby it appears, that, tho' all the Maſters of the ſaid Court have produced before them all the Securities and Certificates of their having the Stock and Annuities in their Names; which upon their Accompts, they appear to be chargeable with as belonging to the Suitors of the Court, and much the greater Part of the Maſters have brought before the ſaid Mr. Baron *Gilbert*, and other Perſons above named, their Caſh or Securities eaſily convertible into Money, Certificates of Stock, and Annuities ſufficient to make good the Ballance of their Accompts: Yet upon the ſaid Report it appears that there are yet conſiderable Deficiencies of Monies, which were in the Hands of ſome Maſters, who are dead; and that ſome of the preſent Maſters have not produced the Ballance of their Caſh, nor given a ſatisfactory Accompt how the ſame is to be made good, and it not having been uſual for the Maſters of the ſaid Court to give Security for the Money in their Hands, the ſaid Committee thought adviſeable, that till this Affair could be more maturely conſidered, and proper Methods eſtabliſhed for ſecurity of the Suitors of the ſaid Court, the Effects herein after mentioned, which have upon this Occaſion been produced, ſhould be at preſent ſecured in the Manner herein after mentioned, and recommended to the Right Honourable the Lord Chancellor, to take ſuch Order therein, as ſhould be proper; all which being communicated to all the ſaid Maſters, and the ſaid Report now read in the Preſence of them all, except Mr. *Kinaſton*, who is indiſpoſed, and thereby prevented from attending; and upon hearing what was alledged by the ſaid Maſters, and the Facts of the ſaid Report, ſo far as concerns their reſpective Securities in their Hands and Power, and the Ballance of Caſh in their Hands not being controverted, his Lordſhip therefore doth think fit, and ſo order, that the ſaid Maſters, Mr. *Holford*, Mr. *Lovibond*, Mr. *John Bennet*, Mr *Godfrey*, Mr. *Lightboun*, Mr. *Conway*, Mr. *Edwards*, Mr. *Thomas Bennet*, Mr. *Elde*, and Mr. *Thurſton*, all now preſent, and likewiſe Mr. *Kinaſton*, do forthwith prepare and ſend to the Bank of *England*, every one a Cheſt with one Lock, and Haſps for two Padlocks; the Key of the Lock to be kept by the Maſter, and the Key of one of the Padlocks by Mr. *Smith*, and Mr. *Malthus*, two of the Six Clerks of this Court, or one of them, and the Key of the other by the Governor, Deputy Governor or Caſhire of the Bank; and that all the Bonds, Exchequer Annuities and Orders, and other Securities given in upon their ſaid Accompts, as Securities belonging to the Suitors of this Court, or as the proper Securities of the ſaid Maſters, towards making good the Ballance of their reſpective Caſh; and likewiſe the Bank Notes and Caſh ſo given in, and not ſince paid to, or laid out for the Suitors of the Court, be depoſited in the ſaid Cheſts, under the Inſpection of Mr. Baron *Gilbert*, and the other Perſons appointed, as aforeſaid, to inſpect the Maſters Accompts, or of ſome of them; and that then the Cheſts be locked up, and left in the Cuſtody of the Bank of *England*; but ſo to be kept, as that the Maſters may have eaſy Acceſs thereto, to comply with the Orders of this Court, till further Order may be taken concerning the ſame; and whereas the Maſters have in their ſeveral Accompts given in patticulars of Stock, and of Annuities, transferrable in the Books of the ſeveral Companies, ſtanding in their Names, which belong to the ſeveral Suitors of this Court, or as their own proper Stock and Annuities, by which part of the Ballance of Caſh in their Hands may be made good or ſecured; it is further ordered, that they do each of them forthwith deliver into the reſpective Company, a Declaration in writing, wherein ſuch Stock in each reſpective Company, or the Annuities there transferrable, as by their reſpective Accompts, appear to belong to the Suitors of the Court, and likewiſe the Stock and Annuities by them reſpectively propoſed towards making good, or ſecuring their Ballance of Caſh, or ſo much thereof, as ſhall equal the Ballance of their ſaid Accompt; in Caſe they have in their Names more than ſufficient for that Purpoſe, it ſhall be declared to be upon Truſt, to attend the Orders of this Court; and the ſaid reſpective Companies are to take care, that proper Entries be made thereof in their Books, ſo that ſuch Stock or Annuities be not Transferred, but by Order or Leave of this Court, and the ſaid Maſters upon performing the Order above, are to take proper Certificates, Signed by Mr Baron *Gilbert*, and the other Perſons appointed as aforeſaid, to inſpect the ſaid Accompts, or ſome of them; and by the Perſons keeping the Keys of the ſaid Cheſts, of the Particulars of the Bonds, or other Securities, and Caſh Notes, depoſited and locked up in ſuch Cheſts, as aforeſaid, and Certificates Signed by the ſame Perſons, and by a proper Officer of the Bank, that ſuch Cheſts are depoſited in the Bank, and Certificates ſigned by the proper Officers of the reſpective Companies, of the Declarations made as aforeſaid, by the reſpective Maſters, and of the Entries thereof; and it is further ordered that the *Goldſmiths* Notes, produced by the ſaid Maſters, in giving in their Accompts, be by them turned into Bank Notes, and ſo depoſited as aforeſaid; and the ſaid ſeveral Maſters are forthwith to give Mr. Baron *Gilbert* Poſt-Accompts of their Receipt, and Payments ſince the former Accompts, and a Copy hereof is to be delivered to Mr. *Kinaſton*, he not being now preſent; and another Copy left at the publick Office of the Maſters, with their Clerk there, for their more eaſy recourſe thereto, in order to their exact Compliance therewith.

EDW. GOLDESBROUGH
Deputy Regiſter.

Mr. Serj. *Pengelly*. By this Order your Lordſhips will obſerve, that ſome of the inſuperable Difficulties

Difficulties were ſurmounted, and ſome of the Evils Cured; and tho' that Method will not take it totally out of the Power of the Maſters, yet why the noble Lord could not have proceeded ſo far before, is left to your Lordſhips Determination; we ſhall not call any further Witneſſes on theſe Articles, we apprehend we have fully made them out. The honourable Gentleman who opens the next Article, will proceed.

Lord *Morpeth*, My Lords, It falls to my Lot, to open to your Lordſhips the 19th Article of this Impeachment, and, it being ſometime ſince 'twas read at your Table, 'twill be neceſſary for me ſhortly to recollect it.

The Article charges, 'That his Majeſty, having in *Novemb.* laſt, directed an Inquiry into 'the Accounts of the Maſters, to the intent, that 'proper Methods ſhou'd be taken, for the Security of the Suitors, the Earl of *Macclesfield*, being 'then Lord Chancellor, and one of the Privy Counſel, in order to obſtruct the ſame, and to prevent a parliamentary Inquiry into the Condition 'of the Offices of the Maſters, did, in the firſt 'Place, adviſe the Maſters to aſſiſt each other with 'Money and Effects; and for their Incouragement, 'repreſented it to them, that it wou'd be for their 'Honour and Service to appear Able and Sufficient, and that if they made a bold ſtand now, it 'wou'd prevent a Parliamentary Inquiry. In the next Place, 'That the Earl perſuaded ſeveral of 'of them, to make falſe Repreſentations of their 'Circumſtances to his Majeſty, by adding a Subſcription to their Accounts, that they were able 'and willing to Anſwer the Effects in their Hands, 'tho' the Earl then knew, or had good reaſon to 'believe the contrary; and that ſeveral of the 'Maſters, according to the Earl's advice, did 'ſupply others with Money and Effects, to make 'a falſe Shew, and appearance of their Abilities.

Your Lordſhips take notice, that the time mentioned in the Article, is *November* laſt; at which time, and for ſome Years before, the Kingdom had rang of the Abuſes and Corruptions of the Court of Chancery, with little hopes of Redreſs, but from the Juſtice of Parliament: The Earl cou'd not but foreſee, that the Period was then drawing near, when the Cries of the Oppreſſed and the univerſal Diſſatisfaction, rais'd againſt his Adminiſtration, wou'd, ſome way or other, force its Relief.

This cry for Juſtice having reach'd his Majeſty's Ear, He was pleaſed to direct the Inquiry mention'd in the Article, and whilſt this was depending, the Impeach'd Lord finiſh'd that Scheme of Iniquity, he had carried on ſo long without controul.

The Facts charg'd in this Article contain in themſelves the vileſt Deceit and Treachery; heighten'd, and aggravated by the wicked Purpoſes, for which they were contrived; Firſt, to have miſled the Council Board into a groundleſs Belief of the Maſter's ſufficiency to Anſwer the Suitors; and on this Foundation he built a more impious, but more fatal Project, the preventing a Parliamentary Inquiry.

The Anſwer given by the Earl to this Article deſerves a particular Notice; He ſays, 'That upon great Conſideration of *Dormer*'s Deficiency, 'and the Danger there might be of further Inconveniencies with relation to the Suitors Effects, of ſome Diſputes in the Court, and of 'ſome Practices of the Maſters, which he thought 'ought to be Reform'd, he was convinced, it was 'a work of too great Conſequence, for him ſingly 'to Attempt; and being highly ſenſible of his 'moſt ſacred Majeſty's paternal Goodneſs, did preſume humbly to beſeech his Majeſty, as the Fountain of Juſtice, to Depute ſome of his Privy 'Council to take the Matters into Conſideration.

My Lords, Seven Years, and more had paſs'd ſince he was made Lord Chancellor, three Years, ſince *Dormer*'s Deficiency, without one honeſt thought, for any thing that has yet appear'd, or one ſincere Step taken by him, for the Honour of the Court, or the ſafety of the Suitors; if the Examination order'd by his Majeſty, did ſpring from his Lordſhip's Requeſt, his real intention, in deſiring it, will be beſt known from his former Conduct, and from the Uſe, we ſhall prove, he intended to have made of that Inquiry; his paſt Behaviour has already appear'd to your Lordſhips, to have been a Series of Extortion and Oppreſſion, conſtantly attended with the vileſt and meaneſt Artifices to keep it Secret; the King's paternal Goodneſs was moſt notoriouſly abuſed, by him, who was intruſted to Diſpenſe it; and that Fountain of Juſtice polluted, which he now dares to name in his Defence.

I think my ſelf juſtified in charging this Part of his Defence, as an Act of high Diſſimulation before your Lordſhips; and a preſumptuous Attempt, to cover his own Guilt under his Majeſty's ſacred Name, and the Orders he was pleaſed to give for that Inquiry. The Earl has, indeed, acknowledged one Truth, in this part of his Anſwer, 'That the great Deficiencies, and Danger to the 'Suitors, and the Practices of the Maſters (which 'he does not name, but ſays) ought to be reform'd, had convinc'd him, that the Reformati'on of them was a Work too great for him, 'ſingly, to Attempt,

My Lords, The many Proſtitutions of the Dignity of that great Office, which have been proved upon him, had doubtleſs greatly wounded the Honour, and Authority of the Court it ſelf; and the Earl had bound himſelf ſo faſt to thoſe Maſters, whom he had admitted, by the Bands of Corruption, which he had not Power to break thro', that nothing which tended to the Honour of that high Court, or the Advantage of the Suitors, cou'd be expected from his Hands.

The next Paſſage of his Anſwer is a wretched Mixture of the moſt abject Flattery of ſuch of your Lordſhips, as attended that Committee, to whom, I believe, his Lordſhip very truly Declares, he was entirely ſubſervient; and of falſe Praiſes of himſelf, for the great Services he contributed to that Inquiry: However, after this Introduction, the Anſwer goes on and declares, 'That he is greatly ſurprized, to find himſelf 'charged with Obſtructing the taking thoſe Ac'counts, which he had thus deſired might be ta'ken, and had promoted with all his Power.

This is a poor Evaſion and Affectation of Innocence, and the more ſurprizing, to come from his Lordſhip, whoſe Miſconduct had ſo notoriouſly been the Occaſion of that Inquiry. And the Charge is not, as he inſinuates, for obſtructing the taking the Accounts, but, for procuring falſe Accounts, and Repreſentations to be laid before the Council, by which means that inquiry might have been fruſtrated.

But he proceeds in his Anſwer to a Declaration, the moſt aſtoniſhing of all others, 'That he never 'thought of preventing a Parliamentary Inquiry, any 'otherwiſe, than by making it unneceſſary, and procuring to the Suitors a full Redreſs of all their 'Grievances, and rectifying whatever he found a'miſs; and that he look'd upon to be his Duty

'and begs leave to ſay it here, once for all, in An-
'ſwer to all the Inſinuations of that kind con-
'tained in any of the Articles.'

By the laſt Words the Earl, in a very ſummary Manner, pronounces his own Acquittal; but your Lordſhips will obſerve, that the Article charges him, in plain Words, with actual adviſing the Maſters to miſrepreſent their Accounts, in order to prevent a Parliamentary Inquiry, and that, if they made a bold ſtand now, it might prevent one; His Lordſhip Anſwers, that he never thought of preventing it, otherwiſe, than by procuring full Redreſs, *&c.*

By this he confeſſes, he did think of preventing the Inquiry of Parliament.

He has not dared to deny the Facts charged, from which this Deſign was manifeſt, becauſe he knew they would be fully proved: But the Subterfuge he flies to, *viz.* that he did intend to prevent it, by rendring it unneceſſary, is impoſſible to be believed, tho' the Commons ſhou'd offer no Proofs at all to this part of the Article; unleſs his Lordſhip imagines, that he is able to carry on the Impoſition ſo far, as that the concealing from his Majeſty the true Condition of the Suitors, by the Methods he was then practiſing with the Maſters, ſhould be taken by your Lordſhips to be the Means of procuring them full Redreſs; and it is ſelf-evident, that if his Contrivance had taken place, the immediate and full Relief of the Suitors, which was his Majeſty's gracious Purpoſe, had thereby been wholly defeated: The Commons therefore may inſiſt upon it, that this flagrant Circumſtance is eſtabliſhed by his own Confeſſion, eſpecially ſince your Lordſhips find, that in the following parts of his Anſwer the Earl declares, 'That Mr. *Holford* having ſubſcribed his Accounts, 'with a Declaration of his Abilities, and Readi-
'neſs to anſwer the Suitors, and ſome of the Ma-
'ſters having uſed Expreſſions, as he thought, not
'ſo proper, others of them having made no Con-
'cluſions at all; he did adviſe them all to write
'the ſame Words under their Accounts, as Mr.
'*Holford* had done, and did tell them, in great
'Sincerity and Friendſhip, that at a Time when
'ſo many Mens Mouths were open againſt them
'as Inſolvent, it would be for their Honour and
'Intereſt to make it appear that they were Able.'

Thus far the Anſwer is a full Confeſſion, that he adviſed all the Maſters to add Mr. *Holford*'s Concluſion to their Accounts.

His Lordſhip ſays, he was induced to do this from their aſſuring him they were able; this Aſſertion will appear to be notoriouſly falſe; however, if it had been true, his Lordſhip, it ſeems, took their bare Words for it, at the ſame Time that he declared to them, that ſo many Mens Mouths were open againſt them as Inſolvent: But here, unhappy Man, he flies again for Sanctuary to the Integrity of his own Heart, and aſſures your Lordſhips, 'That he never thought of a Contrivance to
'have them deceitfully appear to be what they
'really were not; tho' this Declaration of the Innocence of his Mind ſtands alſo in direct Contradiction to the Fact he had juſt before confeſſed; and in the very next Lines he again confeſſes, that ſome of the Maſters, purſuant to his own Directions, did withdraw to add the ſame Words to their Accounts, as Mr. *Holford* had done to his; which he carried to the Council without looking into them, and, when they were read there, the Maſters, it ſeems, were honeſter Men than the Earl expected, or would have had them to be; for, notwithſtanding his Advice, all of them did not make theſe Subſcriptions to their Accounts.

To the other Charge in the Article, of his adviſing them to ſtand by one another and appear able, his Lordſhip has given a particular Anſwer, 'That an Order being made upon the Maſters,
'to produce their Securities and Caſh, and the
'Maſters complaining of the ſhort Time to pro-
'duce ſuch great Sums, he confeſſes, he did ſay,
'that he required them to beſtir themſelves, and
'might, ſay that ſome of their Brethren might per-
'haps be able to let them have Money, till they
'could raiſe it another Way.'

The Excuſe he offers for this Advice, is a very unjuſtifiable one, it is, that the Maſters declared to him, that they had not the Suitors Effects ready, which, by the Duty of their Offices, his Lordſhip knew they ought to have had, but had Effects ſufficient to raiſe the whole, if they could have had more Time. By his own Account of this Matter 'tis plain, that the Maſters did at that Time diſcloſe to him one of the Practices, which 'twas his Duty to have reformed; and yet your Lordſhips ſee what Conſideration he had of it; even at this Juncture he adviſed them to ſupply one another, which they accordingly did, and the Deceit prevailed, till the Order for carrying the Securities and Caſh to the Bank made the Diſcovery.

Perhaps, my Lords, I have dwelt too long on the Earl's Anſwer; but, I think, it will appear to your Lordſhips to betray ſuch a Confuſion of Mind, as nothing but the heavieſt Preſſures of Guilt could have produced, and is a ſtronger Conviction of him than a thouſand Witneſſes.

I will, in the next Place, give ſome ſhort Account of our Evidence to this Article. The Maſters themſelves will prove the Earl's Directions, either given by his own Mouth, or by his Secretaries, when they were required to make up their Accounts to be laid before the King in Council, that they ſhould ſtand by one another, and give the beſt Account, they could, to prevent a Parliamentary Inquiry, and that they need only to produce or ſhew Bank or Goldſmiths Notes; and that it was a critical Juncture, and that the Strong ſhould aſſiſt the Weak, and that they muſt make a Stand, and defeat the Deſigns of their Enemies.

We ſhall farther prove his Lordſhip's expreſs Directions to the Maſters, to add the ſame Concluſion to their Accounts, as Mr. *Holford* had done to his, which was, that they were able and ready to anſwer their Balances; tho' the Earl did not ſo much as ask any of them whether they could make it good, and ſome of them declar'd the contrary; and at that Time alſo he told them, that it would be for their Honour and Service, and that it would look well to the Council to appear able and willing.

We ſhall alſo prove, that this falſe Advice of the Earl was followed by ſeveral of the Maſters, in both Reſpects; and that afterwards, when the Suitors Effects were to be carried into the Bank, ſeveral of them who had before appeared able, now proved deficient in great Sums, and Bank and Goldſmiths Notes, and other Effects, to a great Value, with which ſeveral of them had been accommodated, and which they had produced to the Perſons appointed to examine the Accounts, and which, as appears by the Reports on your Lordſhips Table, they had ſworn to be their own, and not lent them for the Pupoſe of accounting, now vaniſhed, and a Deficiency appeared of fourſcore thouſand Pounds and upwards, which ſtill continues.

This Evidence will fully maintain our Article, and, if any Proof is neceſſary, will ſufficiently clear up the Earl's Intentions.

My

My Lords, The Part which ſtill remains to me is ſuch, as I own my ſelf utterly unable to perform, I mean, to aggravate this Offence in ſuch Manner as it deſerves; the amazing Scene this Article has opened, muſt not be judged of ſingly, and by it ſelf; nor can it be accounted for but as the Off-ſpring of a Mind thoroughly debaſed, and flowing from the moſt incurable Corruption: And tho' they have iſſued from that Source, as from an unexhauſtible Fountain, yet it can't be denied, but as the Earl's thirſt for Lucre grew ſtronger upon him, with that his Invention alſo has conſtantly improved into ſome new Device or Management for ſecuring his exorbitant Advantages, by preſerving the Secret. 'Twas a remarkable Law, in one of the wiſeſt of the *Grecian* Governments, ariſing from their Dread and Abhorrence of a corrupt Judge, *That no Man, bred up to Merchandize, ſhould be admitted into any Office of Judicature, till he had quitted that Employment for at leaſt ten Years*; and the Reaſon was, becauſe the Fingers of Merchants had been too much uſed to Traffick.

The Earl's Adminiſtration, in the higheſt Seat of Juſtice in this Kingdom, has appeared to your Lordſhips to have been one continued pyratical Trade; during the Courſe of which, from Time to Time, as Opportunities have offer'd, he has prey'd alike upon Maſters and Suitors; his craving Appetite was, in no Sort, check'd by the approach of Death it ſelf; and the Hand of a dying Chancellor, as he expreſs'd himſelf to one of the Maſters, was open'd to receive that unjuſt Gain he had ſo plentifully fed upon in full Health: To which, and his other Misbehaviours, your Lordſhips now ſee, that not only the Ruin of many even of the Maſters, but the Diſhonour, Diſtreſs and Confuſion ſtill remaining in that part of the publick Juſtice muſt be imputed; and how groundleſs and unaccountable ſoever the repeated Aſſertions in the Earl's Anſwer, that the Maſters freely and voluntarily parted with their Money to him now, appear to him to be; yet, from the Unwillingneſs and other conſcious Circumſtances, with which he has ſince, at ſeveral Times, refunded ſome parts of his extorſive Gains, tho' the Guilt is not leſſen'd, his Lordſhip is thereby Self-condemn'd.

The Fund out of which he has raiſed his unwarrantable Profits, ought to have been held by him as ſacred and inviolable, being depoſited in the Sanctuary of his own Court: His Extortions therefore muſt be judged of, not as private Violations of Property, but as Pillage taken from the Treaſure of the Publick; the Livelihood of the Widow and Fatherleſs, under the Protection of the Law, in a Court of Juſtice; great part of it, perhaps, dedicated to Charities: And how far your Lordſhips may, in this Reſpect, conſider it as a ſacrilegious Plunder, is left to your Judgment: However, the injuries done to diſtreſſed, ſhipwreck'd Sufferers, have been always eſteemed the higheſt Barbarity.

But the Methods the Earl has uſed from Time to Time to excuſe and cover his Crimes, tho' they were the natural Refuge of an obſtinate unrelenting Mind, yet are more heinous than the Crimes themſelves. Your Lordſhips can't forget the Oath of his Office, which he has ſet forth at large in his Anſwer; he was ſworn *to do Right to all manner of People, poor and rich, according to the Laws and Uſages of the Realm, and not to do or ſuffer the Hurt of the King, if he could hinder it; if not, clearly and expreſly to make it known to him, with his true Advice and Counſel.* 'Tis ſurprizing to find his Lordſhip to have ſo utterly abandon'd all Regard to this ſolemn Obligation, as the whole Courſe of his Behaviour fully demonſtrates. You have alſo heard the Oath he cauſed to be adminiſter'd to the Maſters, immediately after he had ſhared with them the Eſtates of the Suitors; by which Oath *they were likewiſe ſworn neither to do Hurt to the King, nor to do any Fraud to the Hurt of any of the People*; and it has appear'd in what Manner they have ſince been practiſed and tamper'd with by the Earl himſelf, in order to conceal and ſuppreſs the Knowledge of the Grievances of the Subject, which he had procur'd; ſometimes they were threaten'd, at other Times cajoled and ſeduced, but always deceived; and this Artifice, diſcloſed by this Article, was his laſt Shift. When he ſaw the Storm began to ariſe, he deliberately contrived to turn the fatherly Goodneſs of his bountiful Maſter to the Deſtruction of his People, and, by this moſt unparallelled Attempt, to have render'd the Throne it ſelf the Shelter of his Iniquities, and acceſſary to his Oppreſſions; but 'twill now appear, that this was conducted to another Point, to skreen himſelf from the Juſtice of Parliament.

My Lords, There have been Crimes ſo unexampled, and of ſo horrid a Nature, that the Malefactors have been try'd at Midnight, and immediately drown'd, and the Journal Books burnt, in Compaſſion to Mankind, that the Memory of the Proceeding being deſtroyed, the Crime it ſelf might not be propagated.

The Offences of the impeached Lord are ripened to a Fulneſs ſurpaſſing all Belief, too big indeed for the ordinary Hand of Juſtice; but the Commons of *Great Britain*, whoſe Inquiry he vainly flattered himſelf he could prevent (tho' the Terrors of it had long lain upon his Breaſt) have, by this Time, I preſume, convinced his Lordſhip; and his Example will, I hope, convince the World, that no Offender, how great or ſubtil ſoever, can eſcape their Juſtice, of which this publick Proceeding will be an eternal Monument, as well as of the Shame of the unfortunate Earl.

The Lord *Bacon*, one of his Predeceſſors, made a frank Submiſſion to your Lordſhips Anceſtors upon the Accuſation of the Commons, and taking Comfort to himſelf from his Afflictions, uſes theſe Words, 'That hereafter the Greatneſs of a 'Judge or Magiſtrate ſhall be no Sanctuary or 'Protection to him againſt Guilt; and that, af-'ter his Example, it was like, that Judges would 'fly from any Thing in the Likeneſs of Corrup-'tion, tho' at a great Diſtance; which tends to 'purging the Courts of Juſtice, and reducing 'them to their true Honour and Splendor.' He did, indeed, urge it as no ſmall Excuſe for himſelf, that Bribery and Corruption, the Vices of which he ſtood impeached, were the Vices of the Times; but the Commons rejoyce to find, that the Earl, now before your Lordſhips in Judgment, has no Ground to claim the ſame Excuſe.

The Admonitions left by that penitent great Man, and the juſt Puniſhment he underwent, have, I believe, conduced to prevent the like Evil for near an hundred Years, tho' they had not an immediate Effect: For an eminent Hiſtorian of thoſe Times has recorded, that ſome Time after his Sentence in Parliament, meeting the Earl of *Middleſex*, then Lord Treaſurer (whom he had Ground to ſuſpect to have been inſtrumental in his Diſgrace) in Diſcourſe with him he recommended it as a Rule to be obſerv'd by the Earl, and all great Officers, to

Remember a Parliament will come.

And the ſame Author further obſerves, that tho' the Lord *Bacon* had not the Spirit of Divination, and tho' the Treaſurer deſpiſed and laughed at his Advice, yet, within two Years after, the Treaſurer alſo was condemned in Parliament for Bribery, Extortions, Oppreſſions, and other grievous Miſ-demeanors.

I will conclude with one Obſervation more: It may, my Lords, be too juſtly apprehended, that the moſt dangerous Symptoms of a declining Commonwealth do then appear, when Men in the higheſt Stations in Government, eſpecially thoſe which concern the Adminiſtration of Juſtice, ſhall be ſo far loſt to all Senſe of Virtue, as to be guilty of ſuch odious Crimes as thoſe now charg'd upon the Earl; yet, we promiſe our ſelves, that your Lordſhips Juſtice, in the Puniſhment of thoſe Crimes, will afford us a hopeful Proſpect of a reviving State; and that whenever the Crimes and Miſdemeanors of this unfortunate Earl ſhall hereafter be mentioned, it will be remembred at the ſame Time, for the Honour of your Lordſhips, and the Benefit of the whole Nation, that he received a Condemnation ſuitable to his Guilt.

Mr. *Snell*, My Lords, I would gladly have been excuſed *this Service*, becauſe I have been extreamly indiſpoſed, ever ſince I receiv'd the commands of *the Houſe of Commons*, and becauſe I am otherwiſe truly ſenſible of my Inability to execute thoſe Commands, in the manner they ought to be executed. But theſe Reaſons, being thought inſufficient by *others* to prevail for my abſence, it is no longer a Matter of Choice, and I muſt comply with the duty *impoſed* upon me. Your Lordſhips therefore wil be pleas'd to conſider (as the Truth is) that what I have to ſay is only the Product of a few Hours, and that it is impoſſible for me, in ſo ſhort a time, to offer any *Obſervations*, any *Arguments*, but ſuch as will appear crude and indigeſted on this *great and important Subject*.

The *Earl* then *at the Bar* ſtands under *an Impeachment of all the Commons of* Great Britain, *of high Crimes and Miſdemeanors in his late Office of Lord high Chancellor*, and tho' *the Charge* againſt him in *the Article* now under your Lordſhips conſideration, be of a different Nature, yet in every Circumſtance it is as highly *criminal*, as any of thoſe that have gone before it. The Accuſation hitherto has generally run upon *Corruption in the ſale of Offices*, *Extortion*, and *a Series of foul Practices* to cover and conceal *the deficiency in* Dormer's Office, which had drawn upon him *an Univerſal Cry* for Redreſs. All the little Arts, that had been play'd over and over again upon *the Maſters*, either by applying to their Hopes, or Fears, as opportunity offer'd, had prov'd ineffectual; and ſome other expedient muſt be found out, ſome new Stratagem invented, to quiet the clamours *of the injur'd Suitors*. Theſe clamours had juſtly ariſen from a Suppoſition of the *Maſters Inſolvency*, and no Method could be ſo likely to ſerve his turn to appeaſe them, as one, that would make *the Maſters ſeem* to be ſolvent. He therefore ventur'd to adviſe them to aſſiſt one another, to repreſent their Circumſtances in a falſe Light, by Subſcribing their Accounts as Mr. *Holford* had done; and thus he propos'd to deceive *the Suitors*, and to make *the Maſters* appear to the World able to anſwer the Monies and Effects in their Hands: But this laſt Effort was as unſucceſful as his former. For if *the Maſters* were able and ſufficient, what reaſon could he have for his Apprehenſions of a *Parliamentary Enquiry*? If they were not able, he had indeed reaſon for *ſuch Apprehenſions*, which leaves your Lordſhips no room to doubt, but that *this Advice* was given with a View only to keep the Affair out of Parliament; and the conſtant Anxiety he labour'd under to ſecure that *main Point*, does more than *decypher* the Secret of the whole Tranſaction.

Now, my Lords, this extraordinary Step could not proceed from any Doubt *the Earl* could have, whether the Parliament was able and willing to redreſs theſe Grievances and Inconveniencies, or whether it would contribute its Aſſiſtance to the Relief of *the Suitors*: No, my Lords, he knew very well, that the Parliament was the proper Place for redreſſing *Abuſes in the Courts of Juſtice*. He was ſenſible too, that it had always interpos'd with *Accuſations* and *Impeachments*, and that *ill Actions* had, in no Age, met with Favour there. He could have no Hopes that his Ambiguity of Expreſſion, his Dexterity in playing upon Words, in wreſting their proper Senſe and Meaning, could ſtand him in any Stead; or that all his Subtilty could be a Match for the Wiſdom of the Legiſlature: But, perhaps, he might imagine, that a *Committee of Council* might be wrought upon, and miſled by Appearances, at leaſt ſo far, as to *protract the evil Day*; and who could tell what Time or Accident might bring about? Another *Act of Grace* might come, and expunge the whole Score.

I ſhould have congratulated your Lordſhips and the Houſe of Commons, and even the *accuſed Earl himſelf*, if the *juſt Apprehenſions* he conceiv'd of *a Parliamentary Inquiry* had raiſed in him a *compaſſion* equal to the *Sufferings* of *the Suitors*: If it had begot a Repentance of his former Miſdeeds and Crimes, and a reſolution of future Innocence and Uprightneſs: But your Lordſhips find, it had a very different Effect; it only produced a vile Contrivance to guard himſelf againſt Puniſhment for what was paſt, and to make it more difficult hereafter, to detect him in *the ſame Practices*. This is *a behaviour* my Lords, which is ſo far from deſerving your *Mercy*, that it calls aloud for your *Indignation*, as well as *Juſtice*. This is a *Circumſtance*, which is not only a high aggravation of his Guilt, but a great Indignity to the Authority and Honour of Parliament; which I hope will never be *eluded* by the Artifice of the *moſt cunning and skilful*, nor *controul'd* by *the influence* of the moſt *powerful and favour'd Miniſter of State*.

But, if the *impeach'd Earl's Actions* may be allow'd to be any Proof of his Intentions, the Fact ſtated in this Article goes further, and implies *a bold and deſperate Attempt* to miſlead his Majeſty, and to Obſtruct his gracious Endeavours to find out proper Methods for ſecuring the Money and Effects of *the Suitors*, which is an Inſtance on one Hand of his *baſeneſs* and *ingratitude* to *his Sovereign*, to whom he *ow'd every thing*; on the other of his *injuſtice* and *barbarity* to thoſe *of his fellow Subjects*, whom he had *injur'd*, whom he had *oppreſs'd*, during the whole courſe of his *Tyrannick Adminiſtration*.

What, my Lords, muſt have been the Conſequence, if *this Contrivance* had paſs'd? And it would have paſs'd upon a Prince of leſs Diſcernment than his Majeſty. Whenever it had been diſcovered, all the Obloquy would have been thrown upon *his Sacred Perſon*, as if he had been engaged in *a Confederacy* to *ſkreen* that guilt which he was labouring to *detect*. But *the Earls avaricious Temper* had ſet ſo wrong a Biaſs upon his Actions, that *the Means* by which he propoſed to ſhelter himſelf, and to conceal his Depredations, have brought upon him (what he ſo long dreaded) this *juſt and neceſſary Proſecution*.

As to *the Earl's Anſwer* to *this Article*, I hope I may be excuſed the Liberty of ſaying, that it is either *vain*, *evaſive*, or *falſe*.

He begins with enumerating the many Inconveniencies and Abuſes, which he thought neceſſary to be reformed in the Court of Chancery, and with aſſuring your Lordſhips of his good Intentions to contribute to the Reformation of them; but your Lordſhips will beſt judge of this pretended Zeal, and of the Sincerity and Candour, with which it is urged, by conſidering the conſtant Tenor of his Actions, by examining whether he can produce any Inſtance of his having endeavoured to correct theſe Abuſes, or to remove theſe Inconveniencies. Now I don't find thro' his whole Anſwer, nor have I heard it aſſerted, that he ever attempted any Thing of that Kind. On the Contrary, it is too apparent, that many of them took their Riſe while he preſided in Chancery.

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In the next place, my Lords, he arrogates to himſelf the Merit of *that Enquiry*, which his Majeſty had directed to be made by a *Committee of his Privy Council*; and inſiſts, that it was the Effect of his Application.

How true this Aſſertion is, ſome of your Lordſhips may know. But the Part he acted in *that Enquiry*, might have oblig'd him to Silence, or at leaſt have reſtrained him from boaſting of his Conduct. The *Commons* charge him directly with obſtructing the Methods then propoſed for ſecuring the Property of *the Suitors*; and it is not a ſufficient Anſwer, to ſay, that *this Enquiry* was begun at his Inſtance, and that he preſs'd *the Maſters* to bring in their Accompts: For all this may be true, and yet he might give them *the Advice* I have already mention'd, and complain'd of to your Lordſhips. Surely, my Lords, it is a Juſtice due to his Majeſty, to obſerve upon this *vain-glorious Part* of *the Earl*'s Anſwer, that, whatever Share He had in ſetting *this Enquiry* on foot, all the *good Fruits*, to be hop'd for from it, are the Reſult only of his Majeſty's *Paternal Care* of his People.

He further ſays, That *he never thought of preventing a Parliamentary Enquiry, any other ways, than by making it unneceſſary, and by procuring the Suitors a full Redreſs of all their Grievances*, &c.

This is another Inſtance of his Diſingenuity: For *the Grievances* complain'd of, could no where be redreſs'd but in Parliament; and therefore nothing more can be underſtood by the Words [*Any other ways, than by making it unneceſſary*] than by making it SEEM unneceſſary; which is a poor and mean Prevarication.

Nor is there any Credit to be given to what he urges in Excuſe for his *Fraudulent Propoſal* to *the Maſters, viz. That while the Accompts were taking, all the Maſters, at leaſt all that he ſaw, except Mr.* Kinaſton, *had declared that they had Effects ſufficient to anſwer their whole Accompts*, &c.

For we ſhall prove to your Lordſhips by Mr. *Thomas Bennet*, and Mr. *Kinaſton*, that it is *falſe*, unleſs you'll ſuppoſe them *perjur'd*: For they are very poſitive, *That the Earl never ask'd them whether they had Effects to anſwer, or not, or were able to pay in their Caſh-Ballance*: Nay, they are *ſure they did not tell him ſo, becauſe in Fact it would have been falſe, if they had.*

Beſides, Your Lordſhips will have the concurrent Teſtimony of almoſt all *the Maſters* to prove, that (while they were making up their Accompts to lay before the *Committee* of *Council*) they were directed by *Cottingham* and *Dixon* to aſſiſt one another *in making a Shew of their Abilities*; and that ſome of them, *viz.* Mr. *John Bennet*, Mr. *Godfrey* and Mr. *Conway*, complied with *this Direction*, which we muſt aſcribe to *the Earl himſelf*, as being given by his *Two Chief Agents and Miniſters.*

Who is it, my Lords, that has been guilty of the Crimes laid in *this Impeachment?* It is *a Peer of Parliament! A Lord High Chancellor of Great Britain!* And how precarious muſt be the Property, how deplorable the Condition of the Subjects of this Kingdom, if ſuch Crimes ſhould not be puniſh'd in *ſo exemplary* a manner, as to *carry down Terror* to all *ſucceeding Chancellors?*

My Lords, If I have expreſs'd my ſelf with too much Acrimony on this occaſion; if what I have ſaid, has any way offended the *Impeached Earl*, I hope he will do me the Juſtice to believe, that I meant it only in *Deteſtation of his Crimes*, and not in *Diſreſpect to his Perſon.* For I aſſure him, I ſhould have been heartily ſorry for the Misfortune he has brought upon himſelf, if it had proceeded from *Ignorance* or *Neglect*, and not from *an inſatiable Appetite* after *illegal Gains*, which he is pleaſed to miſ-call *Voluntary Preſents*, and for which I muſt ever entertain *the Utmoſt Abhorrence.* I will therefore conclude with a Word of Advice out of the Scriptures for his future Conduct, *That he ſhall receive no Gift; for a Gift blindeth the Wiſe, and perverteth the Words of the Righteous.*

Mr. Serj. Pengelly. My Lords, we beg leave that Mr. *Thomas Bennet* may be examin'd, and that he may give your Lordſhips an Account of what paſs'd after this Inquiry directed by his Majeſty, begun; what Order and Direction the Maſters receiv'd from his Lordſhip in the Execution of that Inquiry?

Mr. Tho. Bennet. My Lords, I think, on the 3*d* of *November* laſt we receiv'd an Order from my Lord Chancellor, to make up our Accompts. It was a very particular Order, expreſs'd abundance of *Items*, and Columns, in what manner thoſe Accompts were to be made up. The Maſters had a Meeting on this occaſion; and a great many, if not all of them, agreed, that the making up of the Accompts in that manner as my Lord Chancellor had directed, was impracticable in ſo ſhort a time; for we were directed to do it forthwith. It was repreſented by ſome of the Maſters to Mr. *Cottingham*, and I believe, by him to my Lord Chancellor, that it was impoſſible to do it in ſo ſhort a time, and it would take up a Month or two, or more. I did not know what other People could do: Ih ad begun to make up my Accompts; I could have done it in a ſhort time, having been in but a little while: Others, indeed, that had been in twelve Years, and muſt have given an Accompt of the whole Proceedings of that time, could not do it. I was inform'd by my Brother, that he could not have done it in a Year: But ſoon afterwards I was told, that the Order was diſpens'd with by my Lord Chancellor; and all we were to do, was to make up an Accompt of the Ballance of the Money and Securities that were in our reſpective Offices diſtinctly, the Money and Securities in Two Diſtinct Columns, only the Sum total at the Bottom. This Order the Maſters all comply'd with, as appears by their Accompts: And between that and the 9*th* Day of *November* following, we had ſeveral Meſſages from my Lord Chancellor by Mr. *Cottingham* to diſpatch theſe Accompts; for they were much wanted, being to be laid before the Committee of Council. On the 10*th* of *November* we had expreſs Orders to appear at my Lord Chancellor's Houſe with our Accompts ready. All the Maſters, except Mr. *Conway*, were there.

Mr. Serj. Pengelly. I deſire he may be ask'd, if there was any other Meeting before that of the 10*th* of *November?*

Mr. Tho. Bennet. I think there were ſome Meetings at Mr. *Edwards*'s Houſe by Mr. *Cottingham*'s Direction, before, and after That at my Lord's Houſe. At thoſe Meetings, at one of them, I particularly remember (which was the moſt material of all) Mr. *Cottingham* brought Mr. *Dixon* with him, and introduc'd him, ſaying, we need not be afraid of Mr. *Dixon*; for he brought him there by my Lord's Direction, becauſe he himſelf

was deaf, and could not well hear what was ſaid. Upon that he began his Meſſage, and ſaid, Our Accompts were then laid before the Council juſt at that time: But, ſaid he, ſuppoſe my Lord Chancellor or the Council ſhould expect, that the Bonds and Securities ſhould be inſpected, would you be willing, that any Officer from him ſhould inſpect your Books and Securities? The Maſters anſwer'd, They were ready and willing to do it; I don't remember any body that oppos'd it. The next Queſtion Mr. *Cottingham* ask'd, was, Whether we could produce the Ballance of our Caſh, and ſhew that we had the Money? To that all the Maſters ſpoke in general, that they were under a great Concern and Surprize, and deſir'd to know what Mr. *Cottingham* meant by that: Whether it was only to produce the Money, or the Money to be taken from us? and whether there was any Danger of that? Says Mr. *Cottingham*, You are only to produce the Ballance of Caſh, and ſhew it. We ask'd, whether we ſhould produce it in Goldſmiths Notes, or Bank-Notes? Says he, I believe Goldſmiths Notes will ſerve: You are to ſhew the Ballance of your Caſh; but I think, Bank-Notes will do better. Upon that, Mr. *Lightboun* ſaid, I don't know what the Conſequence of this may be. Suppoſe, when we have produc'd theſe Notes, they ſhould be detain'd from us, I am afraid moſt of the Goldſmiths Shops about *Temple-Bar* would be ſhut up the next Day, and Inquiry would be made what Holiday it was, and Thouſands of Families might be ruin'd by this Tranſaction. Mr. *Cottingham* propos'd, You may ſtand by, and aſſiſt one another. Mr. *Kinaſton* ſaid, I find, we are like to be ſacrific'd, and given up; for my part, I will neither borrow, nor lend: Any one that borrows is a Knave, and he that lends is a Fool. Upon this, the Maſters were in great concern. Mr. *Cottingham* and Mr. *Dixon* went back to my Lord Chancellor, and ſtaid about an Hour and half, and then return'd to us, and ſaid, my Lord was very buſie, and diſmiſs'd us, and ſo we went home.

Mr. Serj. Pengelly. When was the next Meeting?

Mr. Tho. Bennet. I don't remember; we had ſeveral Meetings. I don't remember when the next was.

Mr. Serj. Pengelly. What paſs'd on the 10*th* of *November* in the Preſence of my Lord *Macclesfield*, at his Houſe?

Mr. Tho. Bennet. When we came to my Lord Chancellor's Houſe, upon the 10*th* of *November*, all the Maſters then preſent carry'd up their Accompts: Two or three had not their Accompts ready; my Brother and Mr. *Conway* had not theirs; but all that were ready, carry'd them up to my Lord, and, according to Seniority, deliver'd them to his Lordſhip. The firſt was Mr. *Holford*: He had added to his Accompt, a Letter, I don't remember the Words, or that it was read; but I remember a Subſcription, which my Lord Chancellor read, and that he ſaid it was very good, and he lik'd it very well, and, I think, he laid it down upon the Table. The next Maſter gave his Accompt, and ſo all the reſt. My Lord look'd them all over; ſome of the Maſters he objected to. I remember, I had written at the Bottom of my Accompt, as near as I can remember, *I am ready and willing that the Bonds and other Securities in my Hands, may be inſpected by ſuch Perſon as your Lordſhip ſhall appoint.* My Lord, after looking them all over, ſaid, he lik'd Mr. *Holford*'s Subſcription, and, ſays he, I wiſh you would all make uſe of that: For it would be for your Honour and Service, to make your ſelves appear able and ſufficient to anſwer the Effects in your Hands. Somebody ask'd my Lord, what might be the meaning of this Commiſſion being appointed by his Majeſty? This, ſays he, I apprehend, will prevent a Parliamentary Inquiry.

Mr. Serj. Pengelly. We deſire that Mr. *Bennet* may repeat the Expreſſion my Lord made uſe of to perſuade them to ſubſcribe, as Mr. *Holford* had done.

Mr. Tho. Bennet. That they might appear able and ſufficient. I think, thoſe were the Words.

Mr. Serj. Pengelly. My Lords, I deſire he may be ask'd, whether my Lord had at that time made an Inquiry of the Maſters, whether they were able and ſufficient?

Mr. Tho. Bennet. I can only anſwer for my ſelf. My Lord did not ask me, whether I was able and ſufficient; but only directed me to write that Subſcription that Mr. *Holford* had done; and I did go down, and write, in effect, that Subſcription. I did ſubſcribe thus: 'My Lord, I have 'all the Securities ſtanding in my Name, as in 'the within mention'd Accompt are ſpecified; 'as alſo the Tallies, Orders, and Bonds in my 'cuſtody; and as to the Money, I am ready to 'give your Lordſhip ſatisfaction, that I am able 'to anſwer it to every Perſon that is entitled 'thereto. The Words, *to a Demonſtration*, which are in Mr. *Holford*'s Subſcription, I omitted, becauſe I could not make it out to the Lords of the Council.

Mr. Serj. Pengelly. My Lords, We beg leave to produce theſe Acompts, and ſhew to your Lordſhips that Subſcription of Mr *Holford*, that was to be followed by the other Maſters, and the firſt Subſcription of Mr *Bennet*.

Mr. *Onſlow.* Pray, tell my Lords, if you can remember, was there any other Expreſſion made uſe of at that time?

Mr. Tho. Bennet. The Expreſſion was, It would be for our Honour and Service, to appear able and ſufficient.

Mr. *Onſlow.* No other Words?

Mr. Tho Bennet. And it would be a means to prevent a parliamentary Enquiry.

Mr. *Onſlow.* Was there nothing mentioned relating to a Stand?

Mr. Tho. Bennet. I don't remember that then; Mr *Cottingham* ſaid ſomething of that at a Meeting at Mr. *Edwards*'s.

(The Subſcription ſhew'd to Mr *Bennet*. And proved by him to be Mr. *Holford*'s Hand.)

Mr. Serj. Pengelly. My Lords, we beg leave, that this Subſcription may be read, which was to be follow'd by all the Maſters.

Clerk reads.

'I have all theſe Securities ſtanding in my 'Name, as in this Accompt is ſpecified, and will 'procure Certificates from the proper Offices, that 'I have, and had them before the Account, if 'your Lordſhip requires it. And as to the Money, I am ready to give your Lordſhip ſatisfaction, to a Demonſtration, that I have it in my 'power to anſwer it to every Perſon, that ſhall 'appear to be entitled to it, and who can give me 'a Legal Diſcharge.

Mr. Serj. Pengelly. We beg leave to read Mr. *Tho. Bennet*'s First Subſcription, that my Lord was not ſatisfy'd with.

Clerk

Clerk reads.

'My Lord, I am ready and willing the Securi-
'ties in the foregoing Account mention'd, ſhall be
'inſpected by ſuch Perſon or Perſons as your
'Lordſhip ſhall be pleas'd to appoint.

Tho. Bennet, 10th Novemb. 1724.

Mr. Serj. Pengelly. Your Lordſhips obſerve, there is nothing in this Subſcription, as to the Caſh, and the producing it. Now we beg leave to ſee the ſubſequent Subſcription.

Clerk reads.

'10 *Nov.* 1724. My Lord, I have all the Secu-
'rities ſtanding in my Name, as in the within
'mention'd Accompt are ſpecify'd; as alſo the
'Tallies, Orders and Bonds in my cuſtody. And
'as to the Money, I am ready to give your Lord-
'ſhip ſatisfaction, that I am able to anſwer it to
'every Perſon that is entitled thereto.

Tho. Bennet.

Mr. Serj. Pengelly. Your Lordſhips obſerve, he hath left out the Words *To a Demonſtration*, becauſe he thought that he could not ſo clearly make it out. I beg leave to mention, that theſe Accompts and Subſcriptions thus alter'd, were actually deliver'd in, and laid before the Council, and are the Original Accompts.

Mr. Serj. Probyn. My Lords, I would ask Mr. *Bennet*, when this Propoſal was offer'd to him, that he ſhould ſubſcribe as Mr. *Holford* had done, whether he made any Excuſe, or pretended he was not able to do it?

Mr. Thomas Bennet. No, I did not; I did as the reſt of the Maſters did.

Mr. Common Serjeant. I deſire he may inform your Lordſhips when this was?

Mr. Thomas Bennet. I think, it was the 11*th* or 12*th* of *November*; I can't be poſitive as to the Day.

Mr. Kinaſton *called.*

Mr. Serjeant Pengelly. My Lords, we deſire that Mr. *Kinaſton* may give your Lordſhips an account, whether he was preſent at this Meeting on the 10*th* of *November*, and what paſſed there relating to their Accompts?

Mr Kinaſton. Yes, my Lord, I was there the 10*th* of *November*.

Mr Serjeant Pengelly. What paſſed at that time at the Earl of *Macclesfield*'s?

Mr Kinaſton. I think I came there before the reſt of the Maſters, or only two or three were there before me. We gave my Lord an account, that we had drawn out our Accompts of the Securities and Caſh, and the Ballance in each Maſter's Hands. Soon after the reſt came. My Lord firſt receiv'd Mr *Holford*'s Accompt, being the Elder Maſter. A Letter at the End of his Accompt was read: My Lord ſeem'd to be affected with, and to approve very well of it. There was ſome Writing at the End of it relating to the Ability. My Lord ſaid, it would do very well to have ſomething to the ſame purpoſe at the End of the other Maſters Accompts, and mention'd to us to go down and write it; accordingly we did go down, and moſt of us, if not all, did write to that purpoſe.

Mr Serjeant Pengelly. Can you recollect what Expreſſions the Earl of *Macclesfield* uſed, to recommend it to the Maſters?

Mr Kinaſton. My Lords, I can't juſtly recollect; I think it was, It would look well before the Council, and prevent a further Enquiry, or a Parliamentary Enquiry, I am not poſitive which: But that I underſtood to be the meaning of it.

Mr *Serjeant Pengelly.* What was it that would look well to the Council?

Mr *Kinaſton.* What Mr *Holford* had writ at the Bottom of his Accompt, *That they were ready*, &c.

Mr *Serjeant Pengelly.* My Lords, I deſire he may be asked, whether there was an Enquiry made by the Earl of *Macclesfield*, as to his Ability or Sufficiency?

Mr *Kinaſton.* No, I am ſure as to my ſelf; and I don't know as to any body elſe.

Mr *Serjeant Pengelly.* I deſire he would inform your Lordſhips, what Subſcription he had firſt made, and what was added, or what Advice was given?

Mr *Kinaſton.* I had writ before: 'My Lord,
'the Perſon I employ'd to write out this Ac-
'compt, has only gone thus far as to the Num-
'ber of the Bonds. I have brought the Bonds with
'me, and deſire you'll appoint any Perſon to in-
'ſpect them, and the other Securities I have here
'given an account of.

Mr *Serjeant Pengelly.* What was writ afterwards? This is wrote with a different Ink than that before: *And as to the Money, I am ready to pay it to the Perſons entitled thereto.* That is with a different Ink.

Mr *Kinaſton.* I believe, upon looking upon it, I went down with the reſt, and writ that in the Parlour at my Lord's Houſe.

Mr *Serjeant Pengelly.* I deſire he may be aſked, whether he, or any other of the Maſters then receiv'd any Explanation how this Sufficiency or Ability was to appear?

Mr *Kinaſton.* Not then, I don't remember any thing of it.

Mr. *Serjeant Pengelly.* Or at any other time?

Mr *Kinaſton.* Some time after this, this was the 10*th* of *November*, and I believe, between that and the 16*th*, when we were to attend the Judges, the Maſters were ſummon'd to meet at Mr *Edwards*'s Houſe: I underſtood, it was a Summons from my Lord *Macclesfield*; and when we were here, there came Mr *Cottingham* and Mr *Dixon*. I don't remember all the Diſcourſe; but they were telling us what was to be done: Firſt, we were to produce our Securities, and there would be no great Nicety in producing them: And then, next, we were to produce the Ballance of Caſh: And I remember, on that, Mr *Cottingham* ſaid, You muſt ſtand by one another, and aſſiſt one another. Bank-Notes, ſaid he, will be beſt; but if you can't get them, then Goldſmiths Notes. You muſt get one ur other to produce and ſhew.

Mr *Lutwyche.* I deſire he may be ask'd, what hhe thought he meant by the Propoſal of getting Goldſmiths Notes, or Bank-Notes?

Mr *Kinaſton.* I did take the meaning in the worſt ſenſe, to be, for the Maſters barely to make a Shew of them; and that made me complain; and I ſpoke warmly, and ſaid, I ſaw what the Deſign was; and whoever borrow'd any Money on that Occaſion, was a Knave, and he that lent it was a Fool.

Mr *Lutwyche.* I deſire he may be ask'd, whether there was any Recommendation by Mr *Cottingham* or Mr *Dixon*, and in what particular Expreſſions thoſe Recommendations were made?

Mr *Kinaſton.* I believe, Mr *Lightboun* expreſs'd himſelf, That if they borrow'd Goldſmiths Notes, and they were detained, the Goldſmiths Shops would

would be ſhut, and People would be enquiring what Holiday it was.

Mr *Lutwyche.* I deſire he may be asked, what was ſaid about making a Shew? if Mr *Cottingham* own'd what was the meaning of thoſe Words?

Mr *Kinaſton.* I don't remember: They were pretty warm, and ſaid they would go to my Lord *Macclesfield*, which they did, and return'd again.

Mr. *Plummer.* My Lords, I deſire he may be ask'd, whether it was generally underſtood among the Maſters, that giving of Bank-Notes and Goldſmiths Notes was to be underſtood Borrowing?

Mr *Kinaſton.* I underſtood it ſo my ſelf, and I believe ſeveral others did; Mr *Lightboun*, and Mr *Holford*, and ſome of the others did ſo, by what they ſaid.

Mr *Serjeant Pengelly.* My Lords, we have done with this Witneſs.

Mr *Serjeant Probyn.* My Lords, I deſire to ask this Witneſs the ſame Queſtion that I asked the other; and that is, whether at the time when this Propoſal was made to him, that he ſhould ſubſcribe as Mr *Holford* had done, he made any Objection to it?

Mr *Kinaſton.* No, I did not make any Objection to it. I had been there firſt, and with my Lord, and at the farther end of the Room, that I remember leſs what happened at that time, than other People did.

Mr Lightboun *called.*

Mr *Serjeant Pengelly.* My Lord, we deſire that Mr *Lightboun* may give an account of what paſſed at this Meeting, relating to the bringing in of the Accompts?

Mr *Lightboun.* What Meeting? that at Mr *Edwards*'s, or that at the Earl of *Macclesfield*'s?

Mr *Serjeant Pengelly.* That at Mr *Edwards*'s.

Mr *Lightboun.* I was at Mr *Edwards*'s about that time, at ſome Meeting when our Accompts were talked of, but whether it was before they were delivered in, or afterwards, I cannot tell. We had ſo many Meetings about that time at Mr *Edwards*'s, that I don't remember exactly, which was before, and which was after. I remember, at the Meeting when Mr *Cottingham* and Mr *Dixon* both were there, there was ſome Diſcourſe relating to the Producing of the Securities, and of the Ballance of the Caſh. I then asked, whether we ſhould produce it in Bank-Notes, or Goldſmiths Notes, and I underſtood, it was hinted that the Goldſmiths that we had dealt with, would aſſiſt any Maſter that wanted Money, but by whom it was ſaid, I can't recollect. The Anſwer I made to that, was, that I ſhould be ſorry that any Maſter ſhould borrow Notes of a Goldſmith, and that they ſhould be ſtay'd or ſecur'd when produc'd, which I apprehended would be done; and next morning ſeveral Goldſmiths would be forc'd to ſhut up their Shops, and it would look like a Holiday in *Fleetſtreet*.

Mr *Lutwyche.* Do you remember any thing concerning a Net?

Mr *Lightboun.* I don't remember the Expreſſion of a Net.

Mr *Lutwyche.* What application was made to any of the Maſters to carry in their Accompts, and to whom?

Mr *Lightboun.* My Lord *Macclesfield* one morning ſent for me, and deſired me, that when the Accompts were brought into the Council, I would be thereabouts, that if there was any occaſion to clear up or explain any thing, or give farther ſatisfaction to the Council, I might be ready. I told his Lordſhip, I would give no ſatisfaction about any one's Accompts but my own. But if his Lordſhip pleaſed that I ſhould attend, I would be thereabouts; and if his Lordſhip pleaſed, I would have another Maſter with me: I nam'd Mr *Holford*, and my Lord deſir'd me to acquaint Mr *Holford* with it, which I did; who ſaid, he was ready to go with me to anſwer any Queſtions that ſhould be ask'd, ariſing on the Peruſal of his Accompts.

Mr *Lutwyche.* What did he deſire you to attend for?

Mr *Lightboun.* To reſolve any Queſtion or Difficulty that ſhould ariſe before the Council. After this, Mr *Cottingham* told Mr *Holford* at Mr *Edwards*'s, that my Lord deſir'd that Two of the Maſters ſhould attend the Council with the Accompts of the whole, and that Mr *Holford* being the ſenior Maſter, ſhould be one, and he was to chooſe whom he would have go along with him; and I having given Mr *Holford* intimation before of my Lord's Inclination, Mr *Holford* deſir'd me to go with him. I told him, I did not care to carry in any other Accompts than my own; as I had not concern'd my ſelf in other Maſters Accompts, I would not then begin; I would not carry any but my own, and no body elſe ſhould carry mine; I would not be a Repreſentative of the Body. Upon that, Mr *Holford* recollected himſelf, and ſaid, nor he neither; he would carry no Accompts but his own. I ſaid, the Accompts were call'd for by my Lord Chancellor, and not by the Privy Council, and thereupon I thought it proper to wait upon my Lord Chancellor, and deliver them to him.

Mr *Lutwyche.* Your Lordſhips will obſerve, the Perſons thought moſt proper to appear for the reſt of the Maſters, Mr *Holford* and Mr *Lightboun*, were ſo apprehenſive of the Maſters being deficient, that they did not care to appear for them. I deſire Mr *Lightboun* may be ask'd, what paſs'd on the 10*th* of *November*, when the Accompts were deliver'd to the Earl of *Macclesfield*?

Mr *Lightboun.* My Lords, upon the 10*th* of *November* my Accompt was not ready at the time I was to deliver it. I rather choſe it ſhould not be ready; becauſe I did not care that it ſhould be carry'd in by any body but my ſelf. However, I waited at the proper time; and when we came there, Mr *Holford* deliver'd in his Accompt, and a Letter he had writ to his Lordſhip, and fix'd to his Accompt, which was there read. My Lord ſeem'd to like the Letter, and took notice of it; and I think, another or two, who were my Seniors, deliver'd in their Accompts. When it came to my turn, I acquainted my Lord, that mine was not ready; but I would go home and finiſh them, and attend his Lordſhip with them at the *Cock-pit* by Eight of the Clock. Accordingly I did, and ſent it in to his Lordſhip.

Mr *Lutwyche.* What paſs'd farther relating to their ſigning of the Accompts?

Mr *Lightboun.* I know nothing of it; for I went away to finiſh my own.

Mr *Serjeant Pengelly.* My Lords, we deſire that Mr *John Bennet* may be call'd.

Mr. John Bennet *appear'd.*

Mr *Lutwyche.* My Lords, we deſire that Mr. *John Bennet* may be ask'd, whether he was at this Meeting at Mr *Edwards*'s Houſe, and what paſs'd at that time?

Mr *J. Bennet.* My Lords, I was at that Meeting at that time, when Mr *Cottingham* and Mr *Dixon* came in, and told us they came from my Lord Chan-

Chancellor; and Mr *Cottingham* ſaid, he had brought Mr *Dixon* with him, becauſe he was deaf, and could not well hear. Mr *Cottingham* ſaid, he had Two Queſtions to propoſe; firſt, whether we were willing that all our Bonds, and other Securities in our Cuſtody, ſhonld be inſpected by him or any other? All of us were willing, and agreed to that. The ſecond was, whether we were willing, or would produce the Ballance of Caſh in our hands before the Council? To this the Maſters made a Stand, and ſaid, The Caſh was conſiderable; and it could not be preſum'd that they kept it lock'd up in Cheſts or Trunks in their own Houſes; that was the way to have our Throats cut: But we believ'd we could do it in a reaſonable time. To which Mr *Cottingham* ſaid, Can't you produce it in Bank-Notes or Goldſmiths Notes? Bank-Notes, ſaid he, will be beſt; but do it in Goldſmiths Notes, if you can't get Bank-Notes. To which Mr *Lightbourn* ſaid, If we produce them in Goldſmiths Notes, and there ſhould happen to be a Net thrown over 'em, and they ſhould be ſecur'd, the Goldſmiths might be oblig'd to ſhut up their Shops, and People would be enquiring what Holiday it was; and it might be a great Damage to thoſe Goldſmiths.

Mr *Lutwyche*. I deſire he may be ask'd, whether any thing was ſaid of aſſiſting one another?

Mr *J. Bennet*. Mr *Cottingham* preſs'd us very much to help and aſſiſt one another, as far as we were able.

Mr *Lutwyche*. Whether was any other Expreſſion made uſe of by him?

Mr *J. Bennet*. I don't remember there was: But he repeated it ſeveral times, that we ſhould ſtand by, and aſſiſt one another with Caſh.

Mr *Plummer*. My Lords, I deſire to ask this Witneſs, if, in purſuance of the Advice given by Mr *Cottingham*, he did aſſiſt any of the Maſters, or was aſſiſted by any of them?

Mr *J. Bennet*. One of the Gentlemen did aſſiſt me with Caſh, which is lock'd up in the Cheſt: I gave him Security for it. And as to my aſſiſting any body, Mr *Conway* inform'd me, he had a Real Security for 9000 *l.* and begg'd, if I could, that I would aſſiſt him with 5000 *l.* and in two or three Days I ſhould have it again: I told him, I had in my Accompt mention'd my Caſh, and that I had offer'd to make up the Ballance by my Real Eſtate, and ſo could not aſſiſt him with any Caſh. He ask'd me, if I had any Bonds by me? I told him I had 2000 *l.* Bonds; and if he could engage to bring them back to me in two Days, he ſhould have them: And upon lodging a Bag of Writings with me, which he told me was a Real Security for 9000 *l.* I accordingly did lend him them, and he brought them back again to me in two Days time.

Mr *Plummer*. I deſire he may be ask'd, what his Inducement was for lending the Bonds?

Mr *J. Bennet*. The Real Inducement was the Real Security which was given me: But it had been recommended by Mr *Cottingham* too.

Mr *Plummer*. I deſire to know whether he open'd the Bag, to ſee what the Security was, or took it by Content?

Mr *J. Bennet*. No, I did not open it; Mr *Conway* aſſured me it was ſo.

Mr *Plummer*. What uſe did he make of thoſe Bonds?

Mr *J. Bennet*. Indeed I don't know.

Mr *Lutwyche*. My Lords, I deſire he may be ask'd, whether thoſe Bonds belong'd to the Suitors of the Court?

Mr *J. Bennet*. They were brought in by the Suitors of the Court after my Accompt was deliver'd in, and I muſt give them in my Poſt-Accompt: Therefore I ſaid, I muſt have them again in two Days time.

Mr *Serjeant Pengelly*. I deſire he may be ask'd, whether this was after he had given in his own Accompt?

Mr *J. Bennet*. Yes, it was after I had given in my own Accompt of my Money-Securities, and the Accompt of my Eſtate.

Mr *Serjeant Pengelly*. I deſire to know what Subſcription Mr *John Bennet* made to his Accompt at firſt, and what afterwards?

Mr *J. Bennet*. I came to my Lord *Macclesfield* juſt after the Gentlemen had been delivering in their Accompts; and they were below, writing their Subſcriptions to their Accompts. I had then made no Subſcription to my Accompt; they told me what my Lord had recommended to them to write; and I had one of them laid before me. I took my Pen and Ink, and varied it in ſome meaſure, and made the Subſcription in this Manner: 'I have all the Securities in my Name, as 'ſpecified on the other ſide; and all the Bonds 'and Orders are in my Cuſtody; and I am 'ready to ſatisfy your Lordſhip, that I am able 'to anſwer the Money to every Party, that is 'Entitled, or ſhall have a Right to receive it.

J. Bennet.

Mr *Lovibond* Called.

Mr *Lutwyche*. My Lords, I deſire he may be asked, whether he was preſent at this Meeting (that hath been ſo often mention'd) at Mr *Edwards*'s?

Mr *Lovibond*. My Lords, I was there but a very little while.

Mr *Lutwyche*. I deſire he may be asked, while he was there, whether any thing was propoſed, and by whom, for the Maſters to lend one another Money or Notes?

Mr *Lovibond*. There was Mr *Cottingham* and Mr *Dixon*, and one of them ſaid, that the Maſters ſhould ſtand by one another, and recommended it to them to Aſſiſt one another with Bank-Notes or Goldſmiths-Notes.

Mr *Serj. Pengelly*. To what purpoſe?

Mr *Lovibond*. Neither of them ſaid to what purpoſe.

Mr *Serjeant Pengelly*. What was the Diſcourſe about at that time?

Mr *Lovibond*. The Diſcourſe was about the Accompts, and how every Man's Ballance was to be made up.

Mr *Serjeant Pengelly*. I deſire to know, during that time, whether Mr *Lovibond* obſery'd that Mr *Cottingham* or Mr *Dixon* went to my Lord Chancellor?

Mr *Lovibond*. Yes, my Lords, they both went, and I came away, and did not ſtay till they return'd.

Mr *Serjeant Pengelly*. I deſire to ask, Whether Mr *Lovibond* did not lend ſome of the Maſters ſome Money?

Mr *Lovibond*. I lent ſome Money to Mr *Bennet*.

Mr *Serjeant Pengelly*. How much was it?

Mr *Lovibond*. It was 10,200 and odd Pounds.

Mr. *Serjeant Pengelly.* I desire to know, whether Mr *Lovibond* was present upon the Delivering in of the Accompts on the 10th of *November* last?

Mr *Lovibond.* Yes, my Lords, I was.

Mr. *Serjeant Pengelly.* I desire he would look upon that Subscription he at first made upon the Accompt, when he deliver'd it in.

Mr *Lovibond.* It is here.

Mr Serjeant Pengelly. Read it.

Mr *Lovibond* reads. 'All which before-'mention'd Particulars I am ready to answer on 'Demand, or to give Security so to do, whenever 'requir'd. *H. Lovibond.*

Mr *Serjeant Pengelly.* I desire he may be asked, whether my Lord *Macclesfield* made any Objection to any part of that Subscription, and what Part in Particular?

Mr *Lovibond.* He made an Objection to the latter Part of it, because that might imply that my Effects were not ready.

Mr *Serjeant Pengelly.* Whether did you alter it afterwards, or was it recommended to you to alter, and in what manner?

Mr *Lovibond.* My Lord *Macclesfield* mention'd, that Mr *Holford*'s Conclusion of his Accompt was most proper; and I had best alter it to that, and make that the Form; accordingly I did, I went down Stairs, and alter'd it as it now stands.

Mr *Lutwyche.* Read this Subscription.

Clerk reads.

'All these Securities standing in my Name as 'in this Account is specified, I am ready to pro-'cure Certificates from the proper Offices, 'that I have, and had them before this Account, 'if your Lordship requires it; and as to the Mo-'neys, I am ready to answer it upon Demand to 'every Person entitled thereto, and who can give 'me a Legal Discharge.

November 10*th* 1724. *H. Lovibond.*

Mr *Lutwyche.* My Lords, I beg leave to make one Observation upon this: I would not trouble your Lordships with observing upon every one of them; but there is something very particular and remarkable in this Case of Mr *Lovibond's.* Mr *Lovibond* had said, as the Truth of the Case was, when he deliver'd in his Accompt, and this Subscription, that he was able to produce or give Security, *&c.* That would have lookt before the Council as if the Money was not ready to be produc'd, it was only giving Security; and for that Reason this Alteration is to be made, to make it look as if he had the actual Ballance in his hands.

Mr *Serjeant Probyn.* My Lords, we desire he may be asked, whether at the time that he wrote this Subscription, he was not able to produce the Ballance?

Mr *Lovibond.* My Lords, I did in my Conclusion offer it; and I could have done it the next Day.

Mr *Strange.* I desire he may be asked, whether he could have done it out of his own Estate, or Effects?

Mr *Lovibond.* I could have done it out of my own Estate.

Mr *Strange.* Did not you mention the Sum of 10,000 and odd Pounds lent? I desire to know, whether you took Real Security for it?

Mr *Lovibond.* Yes, I have a Real Security.

Mr *Strange.* In Land?

Mr *Lovibond.* Yes, in Land.

Mr *Plummer.* I desire he may be asked, if my Lord *Macclesfield* asked him any Questions about his Ability?

Mr *Lovibond.* No, my Lord did not ask me any Questions about my Ability.

Dr *Sayer.* I desire he may be asked, whether at that time he did not believe, that all the Masters were sufficient and able to make good their Accompts?

Mr *Lovibond.* I did believe so, from what Discourse I heard pass among themselves. I had no Knowledge of their Affairs, or of their Estates.

Mr Edwards *called.*

Mr Serjeant Pengelly. My Lords, I desire *Mr Edwards* may give your Lordships an account of what passed at this Meeting at his House?

Mr Edwards. My Lords, I received a Message from *Mr Cottingham*, to know if I would give Leave for the Masters to meet at my House? to which I consented. Some came before Mr *Cottingham*, and asked me if I knew what this Meeting was about; I could give them no Account of it. Mr *Cottingham* soon after came, and the rest of the Masters. Mr *Cottingham* said, he had two or three Matters to lay before them; One was, whether we were willing that our Bonds and Securities should be inspected, by my Lord Chancellor, or by any Person he should Appoint? Every body consented hereto. I think, another thing was, my Lord Chancellor thought it proper, we should carry our Accompts to the Council: There were some objected to that, and we thought it not proper; and the Conclusion of that was, we were to deliver them to him, as being most proper for my Lord Chancellor to carry them to the Council.

Mr *Serjeant Pengelly.* Was that all that was offer'd at that Meeting?

Mr *Edwards.* Really I don't know but that there was a third thing mention'd. I can give you but a very imperfect Account of this Meeting; and that for this reason, it was not thought proper that my Servants should come in, and they oblig'd me to go often out, which I did; and afterwards I heard the chief Substance of this Meeting. And I remember, that after I had heard the main Matter, I said, Gentlemen, the chief Consideration is to get your Money ready as soon as you can; I think the intent is plain to get the Money away from you.

Mr *Serjeant Pengelly.* Whether do you remember any Advice that was then given, relating to the making up of the Ballance?

Mr *Edwards.* No, my Lords, I do not remember: I heard something afterwards by the Masters, about producing Notes; but if any thing was mention'd about it, it was when I was out of the Room.

Mr *Serjeant Pengelly.* Whether on the 10*th* of *November* you was present at the Earl of *Macclesfield's*?

Mr *Edwards.* Yes, my Lords, I was.

Mr *Serjeant Pengelly.* Look upon that Accompt and Subscription.

Mr Edwards *looks upon it.*

Mr *Serjeant Pengelly.* I desire he may be asked, what Subscription he first made, when he gave it in, and whether any Alteration or Addition was made by him afterwards?

Mr *Edwards.* Some of the Masters were at my Lord Chancellor's before me: I did not think it necessary, nor had written any thing to my Accompt before I came there: So I went into a Room,

Room, and writ this that was firſt writ: ‘ *My* ‘ *Lord*, I am ready and willing, the Securities in ‘ the foregoing Accompt mention'd, ſhall be in- ‘ ſpected by ſuch Perſon or Perſons as your Lord- ‘ ſhip ſhall be pleaſed to appoint.

H. Edwards.

Mr *Serjeant Pengelly.* What other Subſcription was made after that?

Mr *Edwards.* After I had made this Subſcription, I carried my Accompt, and deliver'd it to my Lord Chancellor; who looking upon this Subſcription, did not ſeem to approve of it: But he thought Mr *Holford*'s more proper, and deſir'd me to alter it, that all might be as Mr *Holford*'s was: I then went out of the Room, and tranſcribed the Subſtance, if not the Words, of Mr *Holford*'s upon my Accompt, and then I delivered it to my Lord again.

Mr *Serjeant Pengelly.* Read that Subſcription.

Mr *Edwards* reads.] The ſeveral Sums of Mo- ‘ ney and Securities mention'd in this Accompt ‘ are what have come to my hands ſince I was ad- ‘ mitted a Maſter, ſeparate from what were in the ‘ hands of Mr *Dormer* during the time he was a ‘ Maſter (the Account whereof, by reaſon of the ‘ Shortneſs of time, I have not been able to ſet- ‘ tle; but will as ſoon as poſſible) and for which ‘ I am ready to procure Certificates from the ‘ ſeveral Companies and Offices, if your Lord- ‘ ſhip requires it. And as to the Moneys, I am ‘ ready to pay it to every Perſon lawfully ‘ intitled thereto, having a proper Diſcharge for ‘ the ſame.

Nov. 10. 1724. *H. Edwards.*

Mr *Serjeant Probyn.* My Lords, if they have done with this Witneſs, I deſire he may be asked, if he was not ready to pay his Ballance according to his Subſcription?

Mr *Edwards.* Yes, I was; I could have paid it in a Week ſooner than the time requir'd.

Mr Conway *called.*

Mr *Soll. Gen.* My Lords, I deſire that Mr *Conway* may give your Lordſhips an account whether he was at this Meeting?

Mr *Conway.* My Lords, I was preſent at the firſt Meeting at Mr *Edwards*'s Houſe, when Mr *Cottingham* deliver'd my Lord Chancellor's Command, that we ſhould provide and prepare our Accompts: But nothing more happen'd during the time of my ſtay at that Meeting: I went away immediately. At the ſecond Meeting Mr *Cottingham* and Mr *Dixon* were there: Mr *Cottingham* had a great Cold; and, as I remember, there were two Propoſals made: The firſt was, in relation to our Bonds and Securities; and the 2*d*. was in relation to the Mony and Caſh. After every Maſter had deliver'd his Opinion to theſe Points, Mr *Cottingham* and Mr *Dixon* went to wait upon my Lord Chancellor with an account of what the Maſters had ſaid; and before they came back, I was gone.

Mr *Serjeant Pengelly.* I deſire he may be ask'd, whether at that time, when it was propos'd to the Maſters to produce their Caſh, whether they ſaid they were able to do it?

Mr *Conway.* Every Maſter deliver'd his Opinion as he thought fit. *Mr Lightboun* merrily ſaid, If we produced Goldſmiths Notes, and they ſhould be ſecured, the Goldſmiths Shops would be ſhut up, and People would be enquiring what Holiday it was. *Mr Kinaſton* made ſome Obſervations; every one ſpoke as they thought fit.

Mr *Serjeant Pengelly.* I deſire he may be asked, whether they all declared, they were able and ready to make good their Accompts?

Mr *Conway.* I think they all did.

Mr *Serjeant Pengelly.* Whether to produce their Effects or their Caſh?

Mr *Conway.* I am not ſure, whether it was mentioned Caſh or Effects; we made no diſtinction at that time between Caſh and Effects.

Mr *Serjeant Pengelly.* I deſire he may be asked, whether he himſelf declared, that he was able and ready to produce his Effects?

Mr *Conway.* I did declare it at that time, as I afterwards writ, that I would endeavour to produce my Effects.

Mr *Serjeant Pengelly.* Whether there was any, and what Advice or Inſtruction given, relating to their aſſiſting of one another?

Mr *Conway.* No ſuch thing happened while I ſtaid there.

Mr *Serjeant Pengelly.* I deſire it may be asked, whether *Mr Conway* at any time afterwards borrowed any Money of any of the Maſters, and of whom?

Mr *Conway.* The firſt time I attended the Judges and the Directors of the Bank, I did bring my Securities, and an Account of my Effects at the ſame time, without borrowing a Farthing from any Perſon: Before the Securities were gone through, and the Account of my Effects taken, it was obſerved, that the ſame was liable to Objection, as conſiſting of Land, Mortgages, Bonds and Notes, and things of that kind. And before I went, I was told, that ſome of the Maſters had taken an Oath; I deſired to know what that Oath was: It was anſwered, that it was a voluntary Oath; and I ſaid, I could only ſwear, that I had Effects to anſwer; and that I would endeavour to turn thoſe Effects into Caſh, and ſo withdrew.

Mr *Serjeant Pengelly.* I deſire he may be asked, whether he borrowed any Money?

Mr *Conway.* Some time after this I waited upon Mr *Godfrey*; and before I came away, he asked me if I had any Bonds? I told him I had; then pray, ſays he, let me have what you can ſpare, and ſend them immediately: Whereupon I went home, and ſent him 5000 *l. India*-Bonds. Some Days after that I expected Mr *Godfrey* to return me the Favour; and I carried to him Effects to (as I apprehended) the Value of 6 or 7000 *l.* or more; and I deſired him to lend me Bonds, and he ſeemed unwilling without the Security, and he kept the Security.

Mr *Lutwyche.* He hath not anſwered to thoſe Queſtions, whether he borrowed Money, and what Sums.

Mr *Conway.* Mr *Godfrey* lent me upon the Bonds, 9000 *l.* and Mr *Bennet*, 2000 *l.*

Mr *Lutwyche.* Only to purſue this Queſtion; I deſire to know, whether the Securities were turned into Money, or into Notes?

Mr *Conway.* Yes, my Lords, they were turn'd into Notes.

Mr *Lutwyche.* I deſire he may be asked, whether they were lock'd up, or he did take them back again?

Mr *Conway.* I took them back again.

Mr *Lutwyche.* What became of them afterwards?

Mr *Conway.* Some of them I paid off, others I returned to the Perſon that had advanced me Money on thoſe Bonds.

Mr

Mr. *Lutwyche.* I take it, he ſays, he had the Effects that produced thoſe Notes from Mr. *Godfrey* and Mr. *Bennet*; therefore I deſire to know, what became of thoſe Notes after he carried them back from the Judges?

Mr. *Conway.* I returned them to the Perſon that had advanced me the Notes on thoſe Bonds.

Mr. *Lutwyche.* Who was that?

Mr. *Conway.* The Goldſmith, Mr. *Rogers*, at *Temple-Bar.*

Mr. *Plummer.* I deſire to know when he returned thoſe Bonds again?

Mr. *Conway.* In a few Days after.

Mr. *Lutwyche.* My Lords, it may be Neceſſary to Examine how it was that he perſuaded the Goldſmith to let him have thoſe Notes?

Mr. *Conway.* I gave him Bonds for them.

Mr. *Lutwyche.* Whether were thoſe the Bonds that you had from Mr. *Godfrey* and Mr. *Bennet*?

Mr. *Conway.* They were.

Mr. *Lutwyche.* Whether they were not Delivered to the Goldſmith in the Nature of a Pledge for thoſe Notes?

Mr. *Conway.* Yes, they were.

Mr. *Lutwyche.* What became of the Bonds?

Mr. *Conway.* I return'd them.

Mr. *Lutwyche.* To whom?

Mr. *Conway.* To Mr. *Godfrey* and Mr. *Bennet.*

Mr. *Serj. Pengelly.* When he carried back the Notes to the Goldſmith, at that time, whether he took up the Bonds?

Mr. *Conway.* I did.

Mr. *Serj. Pengelly.* As I apprehend, he ſays, he had lent Mr. *Godfrey* 5000*l.* *India*-Bonds, and in return he expected that Mr. *Godfrey* ſhould Aſſiſt him; I deſire he may be asked this Queſtion, Whether the 5000*l.* in *India*-Bonds he ſupplied Mr. *Godfrey* with, was after or before he produced his Caſh to the Committee?

Mr. *Conway.* After.

Mr. *Serj. Pengelly.* Was it before *Godfrey* had done it?

Mr. *Conway.* After he had produced his Securities.

Mr. *Serj. Pengelly.* Was it before or after he had produced his Caſh?

Mr. *Conway.* It was after he had produced his Securities, and before he had produced his Caſh.

Mr. *Serj. Pengelly.* My Lords, we think it will be very neceſſary to lay before your Lordſhips a General State or Account of the total Deficiency; to ſhew how much, upon the Examination and Enquiry that hath been made, the total of the Deficiencies in the ſeveral Offices amount to; and we apprehend, that we are able likewiſe to give an Account of ſome Additional Deficiencies that have been diſcovered ſince. I apprehend, there was at that time near 100,000*l.* Deficiencies.

Mr. *Serj. Probyn.* I deſire he may be asked, whether at that time when he wrote the Subſcription, he was able to pay the Ballance of his Accompt?

Mr. *Conway.* I was, in Effects I had, and I ſaid no otherwiſe.

Mr. *Sandys.* I deſire he may be asked, if my Lord *Macclesfield* asked him as to his Ability?

Mr. *Conway.* No, my Lords, he did not; to my remembrance he did not. I deliver'd my Accompt to Mr. *Cottingham.*

Mr. *Serj. Pengelly.* I deſire he may be asked, what Deficiency there remains upon his Office; whether he can recollect how much it is?

Mr. *Conway.* My Lords, I believe it is 13,000 *l.* my Charge, of which I can take off ſomething in my Poſt-Accompt.

Mr. *Serj. Probyn.* I deſire he may be asked, whether he is now able to make good the Deficiency in his Office?

Mr. *Conway.* Yes, my Lords, I am.

Mr. *Serj. Probyn.* Whether he hath made any Conveyance of any Eſtate as a Security for it?

Mr. *Conway.* I have.

Mr. *Serj. Pengelly.* I deſire he may be asked, whether any thing, or how much hath been rais'd out of that Eſtate?

Mr. *Conway.* It is made ſo very lately, that I don't know that any thing hath been raiſed ſince; it is but a few Days ago that it hath been made.

Lord *Lechmere.* My Lords, I would be glad to know, as there is a Ballance of 13,000 *l.* whether he ſtands indebted to any other Perſons, but to the Suitors of the Court, and to whom?

Mr. *Conway.* No, my Lords, I don't owe any thing to any body, to my Knowledge.

Mr. *Lutwyche.* I ſhould be very glad if Mr. *Conway* could extricate himſelf out of the Difficulties on Account of the Deficiency in his Office. It is very proper to inquire how, and by what Eſtate, that is to be made good.

Mr. *Conway.* It is to be made good by an Eſtate in Land.

Mr. *Lutwyche.* I deſire to know whether that Eſtate is ſettled, whether it was not ſettled upon his Marriage?

Mr. *Conway.* It was never ſettled on my Marriage, I was Tenant in Tail, and Wife and Son joined with me in levying a Fine.

Mr. *Lutwyche.* Whether it is not ſettled by Will?

Mr. *Conway.* I was Tenant in Tail by the Will of my Father; I have levied a Fine, and my Wife and Son have joyned with me.

Mr. *Onſlow.* What Intereſt had your Son in it?

Mr. *Conway.* No Intereſt, as I apprehend; but I thought it was Neceſſary he ſhould joyn to take off all Difficulties and Objections to the Title.

Mr. *Onſlow.* Whether there are no Annuities charged upon that Eſtate, and what they are?

Mr. *Conway.* There are no Annuities charged on that Eſtate.

Mr. *Onſlow.* No Payment to the Mother?

Mr. *Conway.* There is out of another Eſtate.

Mr. *Onſlow.* What are the Rents of the Eſtate you have ſecured for the Payment of this Money?

Mr. *Conway.* Between 5 and 600 *l.* a Year.

Mr. *Onſlow.* Is that your Computation, or is it let at ſo much now?

Mr. *Conway.* I can't ſay it is all let ſo; there are ſome Demeſns.

Mr. *Onſlow.* What are the Rents of that Part of the Eſtate that is let?

Mr. *Conway.* I take it to be 500 *l.* a Year.

Mr. *Onſlow.* What, let at 500 *l.* a Year!

Mr. *Conway.* Yes, or thereabouts.

Mr. *Onſlow.* Do you Reckon the whole Eſtate to be worth 500 *l.* a Year?

Mr. *Conway.* No, I don't reckon in the whole Eſtate, but only that which is Conveyed for the Securing of this Money.

Mr. *Onſlow.* Then I deſire to know, what are the Rents of this Eſtate as it is let?

Mr. *Conway.* I take it to be 500 *l.* a Year, or thereabouts, that is applied for, and as a Security to Anſwer my Deficiency.

Lord *Lechmere.* This 13,000 *l.* Ballance due to the Suitors, which he ſays are ſecured by this Eſtate, I would be glad to know how the Deficiency came, and what is become of this 13,000 *l.* that is due to the Suitors?

Mr. *Conway.* The Occaſion of it was, my coming into the Office coſt me to my Predeceſſor 6000 *l.* I paid beſides 1500 *l.* upon my Admiſſion, and 500 *l.* Contribution towards making good Mr. *Dormer*'s Deficiency.

Mr. *Onſlow.* How was the reſt of the Debt Contracted? You have mention'd but about 8000 Pounds.

Mr. *Conway.* I believe I might, upon Account of my Brother, borrow 1500 or 2000*l.* to ſatisfie his Account to the Crown.

Mr. *Serj. Pengelly.* Out of what Caſh did you repay it?

Mr. *Conway.* I believe it might be out of the Office.

Mr. *Onſlow.* What is become of the reſt; how did you Apply the Remainder?

Mr *Conway.* The Remainder, I can't tell but I may have ſo much due among my Acquaintance; I believe I may.

Mr. *Onſlow.* Did you then lend your Acquaintance out of the Suitors Money?

Mr *Conway.* I believe I might at times lend Friends out of the Caſh that remained dead and uſeleſs, and becauſe I apprehended it was Secure.

Mr. *Onſlow.* You ſay, you have lent to ſeveral of your Acquaintance out of the Suitors Caſh; I would have you name any one Perſon to whom you have lent any of the Money of the Office?

Mr *Conway.* I remember a noble Perſon, if it is proper to mention his Name, to whom I lent 2600 *l.* he is now dead.

Mr *Serj. Probyn.* I don't know whether your Lordſhips will not be pleaſed to confine the Managers to examine only to the particular Article they are now on.

Mr.

Mr. *Onſlow*. We are now upon the Article of the Deficiencies, and the Queſtion hath been asked by the Council for the Noble Lord, whether this Deficiency can be made up by Mr. *Conway?* therefore it is proper to know, whether this Deficiency is likely to be made up, and to know where the Money is, and therefore I would ask who this ſix and twenty hundred Pounds was lent to?

Mr. Serj. *Probyn*. My Lords, I ſubmit it, whether that Queſtion be proper, becauſe Mr. *Conway* hath given Land Security to make good this Deficiency; and therefore it is not material for your Lordſhip's Judgment to enquire how this Deficiency happened.

Mr. *Lutwyche*. I am very ſorry to lay before your Lordſhips the Reaſons and the Order upon which he was committed. I apprehend it extremely material upon this Point, and ariſeth from what the Councel for the Noble Lord have entred into themſelves; for they have asked, whether he was able to make good his Deficiency: Now is it not proper for us to ask the particular Circumſtances, to find out the Truth, whether he is ſo or not. Therefore I beg leave to ask one Queſtion, not waving the other, Whether he hath aſſigned over all his Debts that he could, to make good his Deficiency?

Mr. *Conway*. I have aſſigned over all my real Eſtate.

Mr. *Lutwyche*. Whether he hath aſſigned over this 2600 *l.* due to him?

Mr. *Conway*. That is applied.

Mr. *Lutwyche*. Applied, How?

Mr. *Conway*. Applied amongſt my Cauſes.

Mr. *Lutwyche*. Did he lend a Nobleman a Sum of Money, and apply it to a Cauſe?

Mr. *Conway*. That Sum of Money you are pleaſed to enquire after, I applied to a Cauſe.

Mr. *Onſlow*. He ſaid he lent a Sum of Money, *&c.* I deſire he may be asked, who this 2600 *l.* was lent to?

Mr. *Conway*. I was applied to by a Nobleman to lend him the Sum of 2600 *l.*

Mr. *Onſlow*. By whom was you applied to?

Mr. *Conway*. By my Lord *Bulkeley*, and accordingly it was advanced to him, and it is ſince applied in a Cauſe.

Mr. *Onſlow*. Applied, How?

Mr. *Conway*. Applied in a Cauſe, with the Approbation of the Parties.

Mr. *Onſlow*. Hath it been repaid?

Mr. *Conway*. No, It is applied in a Cauſe of a Suitor, and now it remains as Security.

Earl of *Abingdon*. I am ſo nearly related to that Noble Lord that is mentioned, that I muſt do that Juſtice, as to put Mr. *Conway* in mind, as I did Mr. *Hiccocks* before, That if any Queſtion is ask'd him, which may perſonally ſubject him to any Penalty, or as he hath the Bar Gown may concern his Client, he ought to be left to his Diſcretion, whether he will or will not anſwer.

Lord *Lechmere*. A Perſon is not obliged to anſwer any thing that may criminally affect him; but where the Enquiry is after a Debt, in Order to explain his Oath as to his Sufficiency, which is the Matter of Debate, ſurely that is material, and ought to be anſwered to; and I deſire to be informed, whether this 2600 *l.* which he ſaid was lent this Noble Lord out of the Suitors Money, was repaid to him by my Lord *Bulkeley*, and when?

Mr. Conway. It is not repaid. It is applied in a Cauſe, the Parties have approved of it as a Security.

Lord *Lechmere*. When was this Money in the Hands of my Lord *Bulkeley* applied to the Benefit of any Suitor, and by what Order or Authority?

Mr. Conway. It is ſome Time ſince, ſome Months ago, five or ſix Months ago.

Lord *Lechmere*. Was this by any Order of the Court of Chancery?

Mr. Conway. No, my Lords, by the Approbation of the Parties.

E. of *Macclesfield*. My Lords, if you pleaſe to give me Leave, I would ſuggeſt ſomething, that poſſibly may help towards the better underſtanding him. If my Gueſs be right, this relates to his Poſt-Accompt. He hath ſaid his Charge is 13,000 *l.* And he hath ſaid, he could diſcharge 2000 *l.* or more, of that Ballance by a Poſt-Accompt; Now I apprehend this he is ſpeaking of now, is that Article of the Poſt-Accompt. I don't know, if I gueſs his Meaning right, but I deſire he may inform your Lordſhips, in caſe it be otherwiſe.

Lord *Lechmere*. It may be for your Information to know who are the Perſons to whom this is applied; that it may be known whether it is in the Poſt Accompt or not?

Mr. Onſlow. My Lords, We deſire firſt to know, what Security my Lord *Bulkeley* gave?

Mr. Conway. He gave a Bond and Judgment.

Mr. Onſlow. Who is it you have applied the Security to?

Mr. Conway. It is in the Cauſe of *Faulconberg* contra *Faulconberg*.

Mr. Onſlow. Do you reckon this Part of the 13,000 *l.* now deficient?

Mr. Conway. No, I do not reckon it in that Sum.

Mr. Onſlow. Your Lordſhips will pleaſe to recollect, that his Deficiency is 13,000 *l.* We ask him how that Deficiency came; he hath given Your Lordſhips an Account of 10,000 odd hundred Pounds; and firſt ſaid the Reſidue was in the Hands of his Acquaintance, and named 2600 *l.* Money of the Suitors to be in the Hands of my Lord *Bulkeley*; now he ſaith this laſt Sum is not Part of the 13,000 *l.* Therefore now I would ask, how the Remainder of his Deficient Money was applied, or how the Debt happened?

Mr. Conway. If my Lords will pleaſe to give me Leave to explain it; As to the Remainder of the 13,000 *l.* you have been pleaſed to reckon 10,000 odd hundred Pounds to be made out; then there is 2100 *l.* odd Money I have laid out in Land, which I have ſince conveyed, which makes 12,000 odd hundred Pounds; and the reſt I have in Bonds and Notes, which I have to make up the Reſidue.

Mr. Lutwyche. I deſire he may be asked, whether he hath thoſe Notes, and they are ready? I deſire to know, whether they have not been paid into Court to make up his Deficiency?

Mr. Conway. No, I humbly hope to have it allowed me on my Poſt-Accompt, being applied in the 'foreſaid Cauſe with Approbation of the Parties.

Mr. Onſlow. We have done with him; and leave him to Your Lordſhips Obſervation.

Mr. *Thompſon* called.

Mr. Serj. *Pengelly*. My Lords, we beg Leave, that Mr. *Thompſon* may give Your Lordſhips an Account, upon the Inſpection and Examination of thoſe Accompts, how much the Deficiency of the ſeveral Maſters amounted to?

Mr. Thompſon. So much as the ſeveral Maſters ſtood charged with by their own Accompts, and did not lock up or produce proper Securities for, I account a Deficiency; and by this Rule, I have collected the Deficiencies of the ſeveral Maſters, from the Reports made to the Committee of Council.

Mr. John Bennet's Deficiency amounts to *L.* 17,541: 15: 10.

Mr. *Conway*'s Deficiency in his Cash only amounts to *L.* 10,039: 4: 4 ½, but Mr. *Conway*, while his Accompts were under Examination, sold 2000 *l.* South Sea Annuity, and 3500 *l.* South Sea Stock; and of the Money arising thereby, he paid to the Suitors, to whom such Annuity and Stock did belong, no more than *L.* 2593: 9: 3. so that his Deficiency is increased by the Sum of *L.* 3550, somewhat more or less, according to the Price he sold at.

Mr. Serj. *Probyn*. Was what he sold, part of the Suitors Security?

Mr. Thompson. Yes. — Mr. *Kynaston*'s Deficiency amounts to *L.* 26908: 11: 3 ¼.

Mr. *Thomas Bennett*'s Deficiency amounts to 9075 *l.*

The Total of the Deficiency of the present Masters is *L.* 67,114: 11: 5 ¼.

The Charge that remained upon Mr. *Borret*'s Office, amounted to *L.* 56,050: 10: 1½. But Mr. *Bennet* and Mr. *Godfrey*, the Masters, who had the Care of his Effects, gave it as their Opinion before the Judges and Directors, that the Effects he left, would produce 44,000 *l.* and upwards; so that I compute the Deficiency of Mr. *Borret*'s Office at *L.* 12,050: 10: 1½.

The Total Charge upon Mr. *Dormer*'s Office, when he resigned to Mr. *Edwards*, amounted to *L.* 49,604: 11: 11; but Mr. *Edwards* has paid in Discharge of that Sum, the Sum of *L.* 23,725: 15: 9½. so that the Deficiency of Mr. *Dormer*'s Office amounts to *L.* 25,878: 16: 1½.

Mr. Serj. *Pengelly*. Whether in that is Mr. *Wilson*'s and Mr. *Poulter*'s Security included in *Dormer*'s Accompt?

Mr. Thompson. Mr. *Dormer*'s Deficiency I take to be *L.* 25,878: 16: 5 ½; and the whole Deficiency I take to be *L.* 105,043: 17: 8 ¼. And if any Securities or Sums of Money belonging to the Suitors are omitted in the Masters Accompts, such Securities and Sums are not included in this Estimate.

E. of *Macclesfield*. Have you had before you the Administrator, either of Mr. *Borret* or Mr. *Dormer*?

Mr. Thompson. No, my Lord.

Mr. Serj. *Pengelly*. My Lords, we shall beg Leave to call one Witness to give Your Lordships an Accompt of another Deficiency of 2000 *l.* upon Mr. *Conway*, which is not charged in his Accompt. We desire that Mr. *Sanderson* may be called.

Mr. *Sanderson* sworn.

Mr. *Lutwyche*. We desire, that Mr. *Sanderson* may give Your Lordships an Accompt of any Money in Mr. *Conway*'s Hands, and how much it is, that is not brought to Accompt?

Mr. *Sanderson*. My Lords, I was concerned as a Solicitor in a Cause in Chancery, between Sir *Erasmus Norris* and *Alexander Norris*; soon after the Accompts were brought into the Registers Office, I went to look and see if Mr. *Conway* had charged himself with a Sum of Money paid in, in that Cause. I found by his Accompt, that it was not charged. I had drawn up the Accompt, and given a Copy of it to Mr. *Conway*, which he did not deny, but he said, there was not so much by 1 or 200 *l.* Said I, there is no Entry at all of the Cause, and no mention of any Sum. I told him, it was an Omission not to mention the Cause or Sum. He said, that he believed it was not so much, he did therefore not mention it. I asked him, why he did not insert, how much it was as he thought it? He said, because he would pay in all.

Mr. Serj. *Probyn*. We desire he may be asked, how much the whole Money in that Cause was?

Mr. Sanderson. *L.* 2274: 8: 11. besides Interest from Lady Day last was Twelve-month.

Mr. Sol. Gen. My Lords, this is the Sum of the Account we had to lay before Your Lordships of the Deficiencies, notwithstanding the Masters represented themselves as able to pay the whole. We would not represent it to Your Lordships, that this will certainly be the Loss, because some of the Masters have given Security for some Part; tho' we apprehend the Security given will not be sufficient for half.

E. of *Macclesfield*. I desire to ask Mr. *Thompson*, whether this Charge he makes upon Mr. *Borret*'s Office be a Charge taken from the Office, or only an Account taken from Mr. *Meller*?

Mr. Thompson. This Charge was taken from the Vouchers, which Mr. *Meller* produced.

E. of *Macclesfield*. Are there any Payments allowed, made by Mr. *Borret* in his Life time?

Mr. Thompson. A great many.

E. of *Macclesfield*. Who gave You an Account of that?

Mr. Thompson. Mr. *Meller*, my Lord.

E. of *Macclesfield*. But I speak of the Money paid by Mr. *Borret* himself, not what Mr. *Meller* paid. Have You any Account what Mr. *Borret* paid out himself?

Mr. Thompson. The Account we had of this, was from one Mr. *Parker*, as I think his Name was, who was Clerk to Mr. *Borret*. He produced several Receipts for Sums paid: And the Masters in Chancery, who had the Care of Mr. *Borret*'s Effects, allowed the Books and Papers produced by Mr. *Parker*, to be the Books and Papers belonging to Mr. *Borret*'s Office.

E. of *Macclesfield*. As to the Effects belonging to Mr. *Borret*, who gave you the Account of them?

Mr. Thompson. Mr. *Bennett* and Mr. *Godfrey*.

E. of *Macclesfield*. Do you know who is Administrator to Mr. *Borret*?

Mr. Thompson. I have heard that *Mr. Paxton* is.

Mr. Nicholas Paxton. Yes, my Lords, I took out Administration to *Mr. Borret*, about the middle of *April* last.

Lord *Lechmere*. I desire to ask *Mr. Thompson*, whether the Computation he hath made of the several Deficiencies, amounting to an hundred and five thousand Pounds, whether they are taken from the Voluntary Accompts of the Masters delivered in, or whether any of the Suitors were concerned in those Accompts, or have been Parties to such Computations?

Mr. Thompson. From the Masters Voluntary Accompts only.

Mr. Serj. *Pengelly*. I beg Leave to ask one Question, which arises from the Question, which the Lord within the Bar hath been pleased to ask, whether *Mr. Godfrey* and *Mr. Bennet* were not the Masters that appeared, and were employed under the Earl of *Macclesfield* at that Time, and had the Custody of the Effects of *Mr. Borret*?

Mr. Thompson. *Mr. Bennet* and *Mr. Godfrey* were the Persons that appeared to us to have the Care and Custody of Mr. *Borret*'s Effects.

Lord *Lechmere*. As to the Nature of these Deficiencies, I think he says, these Deficiencies arise upon the Cash Ballance. Then I would be glad to know, whether in the Accompts that he hath perused, and in the Computation of those Deficiencies, the several Deficiencies of the Cash Ballance arise upon the whole Ballance, or is appropriated to any particular Suitors concerned in those Ballances?

Mr. *Thompson*. No Part of the Cash Ballance is appropriated to any particular Suitor.

Mr.

Mr. *West*. My Lords, the Commons have now produc'd a very long, and as they apprehend, a very full and convincing Evidence, in Maintenance of the Impeachment by them Exhibited againſt *Thomas* Earl of *Macclesfield*, for High Crimes and Miſdemeanors; and I am commanded to acquaint Your Lordſhips, That they do not intend to trouble this Houſe with any further Examination. But, my Lords, the Commons conſidering the Length and Variety of the ſeveral Facts and Circumſtances, that have been offer'd, are of Opinion, It may be of Service to that Cauſe, in which their Zeal for publick Juſtice has made them to engage, that the whole of what they have inſiſted upon or produc'd, ſhou'd in ſuch Manner, as I am able to obey their Commands, be ſhortly recapitulated and preſented in one View to Your Lordſhips Conſideration.

The Charge in general, and the ſeveral Articles of it, have been fully open'd by thoſe Gentlemen, who preceded me upon this Occaſion. The Witneſſes who have been examined, and the other Evidence that has been read, have been fully conſidered, ſo far as they relate to thoſe Particulars, that were the immediate Occaſion of their being produc'd; I ſhall not therefore waſte Time, by enumerating once more the Articles of the Charge, nor by too minutely repeating the whole Evidence that has been given: But ſhall endeavour to reduce this long and various Examination to ſome general Heads, that may expreſs the Subſtance of the general Articles, and then remind Your Lordſhips of what I can recollect to have been moſt materially offer'd in Support of them. To this End, my Lords, I beg Leave in the firſt Place, to obſerve that ſtrict Union and Connection there is between the Crimes of which this Earl ſtands charged. Your Lordſhips cannot but remark, that the Articles mutually ſupport, and almoſt prove each other; ſo that if any one be admitted to be proved, it is difficult, if at all poſſible, to doubt the Truth of the reſt.

A wicked and corrupt Deſign and View to raiſe and procure to Himſelf exceſſive and exorbitant Gain and Profit, was the fatal Principle, from which all this Miſchief ſprung. It was this that prompted the Earl of *Macclesfield* to extort thoſe large Sums of Money, which he received from the ſeveral Perſons, whom he admitted to the Office of Maſters of the Court of Chancery. The *gratifying this Avarice* engaged his Lordſhip to neglect every other Conſideration, to overlook that Care he ow'd to the Suitors of the Court, and to admit Perſons of ſmall Abilities, and every way unqualifyed for the Diſcharge of ſo great a Truſt. —— *This*, obliged him to connive at, and permit the fraudulent Practice of paying the Exceſſive Price of their Places, out of the Money belonging to the Suitors of the Court. —— *That* again, forc'd him to ſuffer, or rather to encourage the purchaſing Maſters, to Traffick and Game with the Eſtates of the Suitors. —— There was no other way, by which theſe liberal Purchaſers, cou'd Reimburſe themſelves.— And *this Circumſtance*, even after it was apparent the Suitors were likely to looſe a great Part of their Effects, reduc'd him to the unhappy Neceſſity of refuſing to take thoſe Meaſures, that were neceſſary to prevent that Practice for the Future. And when the fatal Effects of this unbounded Liberty, which he permitted the Maſters to enjoy, began to appear, then was He compell'd to become a Confederate with the deficient Maſters, to prevent its being known to the World. —— From *hence* ſprung the unequal Compoſition with *Wilſon:* The partial Orders for the Payment of Money: The private Contribution, to anſwer the moſt preſſing Demands: And from *hence* his own Liberality to *Lockman*. But when all theſe Methods prov'd ineffectual, and he found the Cries of the Widows and Orphans had reach'd His Majeſty, then, my Lords, did the Lord High Chancellor of *Great Britain* combine with theſe Maſters, adviſe and perſuade them to make falſe Repreſentations of their Circumſtances and Accounts, in Order to deceive His Majeſty, to fruſtrate His moſt Gracious Intentions for the Good of His Subjects, and to prevent (what He moſt fear'd) a Parliamentary Inquiry.

Theſe, my Lords, are the malignant Conſequences of that Corruption of which the Earl of *Macclesfield* is accus'd; and which the Commons apprehend to be perfectly conſiſtent with the whole *Tenor of his Actions*, during the Time of his being Chancellor.

The Commons began their Evidence with that Oath, which it was prov'd the Earl had taken, in Conſequence of the Statute of the 12 *Ric.* 2. and which was adminiſtred in the uſual and accuſtomed manner. I ſhould not have reminded Your Lordſhips of this Circumſtance, if it was not for that unaccountable Attempt, to quibble away the Sanctity of an Oath, and to repreſent it as a meer Ceremony and Form, for no other Reaſon, but becauſe it was read to him in *French*, and when he kiſs'd the Bible, His Lordſhip and the Clerk ſaid nothing to each other. They afterwards gave other Evidence, relating to ſuch Profits as he had made of the Office of Chancellor, which he did not admit in his Anſwer. But I do not apprehend it neceſſary to mention them particularly to Your Lordſhips.

The firſt general Head of Accuſation againſt the Earl, is, That he *Corruptly, Illegally, and Extorſively inſiſted upon, and received great Sums of Money, for the Admiſſion of ſeveral Perſons into Offices relating to the Adminiſtration and Execution of Juſtice.*

To lead the Way to this Charge, the Commons began their Evidence with the 9th Article, which relates to his taking 100 Guineas from *T. Bennet*, for permitting him to reſign his Office of Clerk of the Cuſtodies, and for procuring a new Grant of that Office to *Hugh Hamerſly*.

The Commons choſe to begin with this Article, not becauſe they thought the Sum taken ſo conſiderable, as to have any great Influence upon the Judgment Your Lordſhips may give upon this Occaſion; but becauſe the Fact diſcovers the Man, and fully explains, what manner of Mind he muſt be endow'd with, who could ſtoop to an Action ſo low and ſordid. This Article does of it ſelf lay a Foundation of Probability for the others, in which he is charg'd with the extorting of much larger Sums. It is true, His Lordſhip in his Anſwer gives himſelf a very different Character, and offers to produce a Catalogue of his own Generoſities. What Argument there would be in this when produc'd, I cannot comprehend. I will therefore endeavour to ſave Your Lordſhips that Trouble. I can admit even more than is deſired. Inſtead of being Generous, I will ſuppoſe his Lordſhip (far from the Truth) to have been profuſe. Yet ſtill would it prove nothing. For ſurely, it is not a new Character in Hiſtory, that even Squanderers ſhould be Rapacious.

To prove the Particulars of this Article, the Reſignation of *Bennett* and the new Grant to *Hamerſly*, were both prov'd. And as to the Payment of the Money, Mr. *Cottingham*, who was Secretary to my Lord *Macclesfield*, and who, thro' the whole Courſe of the Evidence, appears to have been his great Agent and Confident: He owns the Receipt of the hundred Guineas, and ſwears he paid 'em to the Earl, within a Day or two after he received them. He alſo owns the Conſideration, for which this Money was paid, That it was

for

for permitting *Bennet* to ſurrender his Place. —— Were there no Evidence but *Cottingham* alone, the Commons think they have ſufficiently prov'd this Fact. But the Evidence of *T. Bennet* puts it beyond Contradiction, and makes it manifeſt, that the hundred Guineas were in a manner extorted. —— He ſwears ſoon after he was admitted a Maſter, he was deſirous to part with his Place of Clerk of the Cuſtodies; and to that End apply'd to *Cottingham* for my Lord *Macclesfield*'s Favour, and acquaints him with the Perſon, to whom he deſired the new Grant ſhould be made: *Cottingham* upon this ſpeaks to my Lord, and ſome ſhort time after tells Mr. *Bennet*, that neither my Lord nor himſelf knew *Hamerſly*. Your Lordſhips may remember that the Earl by his croſs Examination, ſeem'd to endeavour at ſome ſmall Triumph upon this Circumſtance. My Lords, it is not ſo wonderful, that *Cottingham* ſhould not ſpeak Truth, there is no giving Evidence to the Tone of the Voice, nor the Air and Manner, in which a Converſation is carry'd on; more eſpecially, if it be conſidered, that *Cottingham* was a Man who doubtleſs upon theſe Occaſions would not have known his Father without the mediation of Gold. *Bennet* was ſurpriz'd at this Speech, as well he might, when *Hamerſly* lived next Door to *Cottingham*. However, *Cottingham* at laſt explain'd the Myſtery, by letting him know, a Preſent *was expected by the Earl,* and *Cottingham* himſelf own'd, he did ſay the Earl *inſiſted upon a Preſent*.

Mr. *Weſt* was here interrupted by the Earl of *Macclesfield*, who ſaid that *Cottingham*'s Words were not, That he inſiſted upon, but that he expected a Preſent. Upon which Occaſion Mr. *Onſlow* repreſented warmly to the Lords, that the Behaviour of the Earl was Irregular, and that the Managers ought not to be broken in upon while they were ſpeaking. And then Mr. *Weſt* went on,

My Lords, It is my Duty to repreſent the Actions of this Earl in the ſtrongeſt Light; and the ſtrongeſt Light is the juſteſt Light. Upon Recollection I do not think the Word I us'd to be of Force equal to the Fact. My Lords, The Expectations of a Chancellor, communicated by a Secretary to a new made Maſter, *is more than to inſiſt*. But be that as it will; *Bennet* in Anſwer to theſe Expectations, repreſented the Hardſhip of being oblig'd to pay Money upon this Occaſion, when he had ſo lately paid a very large Sum to the Chancellor; and by Way of Argument told him, that when he came into the Place himſelf, he paid nothing; and his Brother told him, that Lord *Cowper* upon the like Occaſion had taken nothing, becauſe as that Noble Earl ſaid, Nothing was due. At laſt, my Lord *Macclesfield* and his Secretary, being both inexorable, *Bennet* agreed to pay *the One hundred and five Pounds*. After this Agreement was made, *Cottingham* acquainted his Lord with the Bargain, and then told *Bennet*, that the Earl agreed to it: But withal, that it was a great Favour he would take ſo ſmall a Sum; and *Cottingham* at the ſame Time made this very remarkable Declaration, That if Mr. *Bennet* would bring the hundred Guineas, he need take no farther Trouble, for the Chancellor would apply to the King for Leave for him to reſign, and would take Care of the other neceſſary Steps. And accordingly the Bargain was executed in that manner. For Mr. *Bennet* knew ſo little of the intermediate Proceedings, that he has told Your Lordſhips he knows not how, or by whom the Warrant came into the Hands of the Clerk of the Patents.

It is difficult not to feel ſome Indignation riſe at the bare relating this Meanneſs! mean it would have been in any Man: But for a Peer of *Great Brittain*, an Earl, Lord Chancellor of the Kingdom, and a Chancellor *ſo oblig'd and ſo dearly bought*, to proſtitute ſo many illuſtrious Characters, in ſo low a manner as to become a Broker for the Hire of 100 Guineas, is aſtoniſhing! But, my Lords, when I conſider that this Earl was at the ſame Time one of the Lords Juſtices of the Kingdom, in a Commiſſion to execute ſome of the Functions of Majeſty itſelf, I want Words to expreſs ſuch a Tranſaction in its proper Colours.

My Lords, I have mentioned the Evidence relating to this Point ſomething the more particularly, becauſe the Proof comes up to the expreſs Words of the Statute of the 12 of *Ric.* 2. and proves, as I apprehend, beyond Contradiction, that the Earl of *Macclesfield* diſpos'd of this Place *for Gift and Brokage*.

Before I quit this Article, I beg Leave to obſerve to Your Lordſhips, that my Lord *Macclesfield* in his Anſwer inſiſts upon it to be the Right of the Chancellors to accept Preſents; and therefore owns he did in this Caſe *accept a Preſent*. But then he avoids, as he every where elſe does, the naming any particular Sum that *he accepted*. I wou'd willingly ask, why this Precaution, if what he did was lawful and right? I would alſo obſerve, that there is ſomething ſtrangely equivocal in that Part of his Anſwer, where he denies he inſiſted on 100 Guineas, or any other Sum. This Anſwer, both explains his extorſive Method of proceeding, and almoſt demonſtrates the Practice of it. For it is very remarkable His Lordſhip does not deny he inſiſted upon a Preſent in General, but only that he did not inſiſt upon any particular Sum.

My Lords, Your Lordſhips will find by the Courſe of the Evidence, that this Artifice of not naming a particular Sum was not peculiar to this Inſtance; but my Lord *Macclesfield*, whenever a Maſter's Place, or any other Place was to be ſold, carefully avoided fixing the Price by demanding a certain Sum. No. —— It was more gainful to ſet every Thing up to the beſt Bidder, and reſolve never to diſpoſe of any Office, till the Sanguine Purchaſers, by bidding on each other, were artfully ſcrew'd up (voluntarily to offer a Preſent, as his Lordſhip gently phraſes it, but as the Commons think, they have prov'd the Fact to be) a *Corrupt and Exorbitant Price*, equal to the avaricious Wiſhes of the Seller.

The next Inſtance to which the Commons call'd Evidence, was the illegal Sale of ſeveral of the Offices of Maſters in Chancery. Now, my Lords (not to be too minute in mentioning the Evidence) it is manifeſt from the Oath of Office, which they take, from the Commiſſion granted to the Maſters in Conjunction with the Judges, and from the Evidence given by Mr. *Meller*, relating to that ſubordinate Juriſdiction, which they exerciſe, *That theſe Offices do relate to the Adminiſtration and Execution of Juſtice*.

My Lord *Macclesfield*, in his Anſwer to this Part of the Charge, induſtriouſly is ſilent as to the particular Sums which he received, altho' Your Lordſhips will obſerve, that Payment of the individual Sums charged in the Articles has been prov'd by the Perſons themſelves, who paid the Money. *Kinaſton* and *Bennet* are expreſs as to the Payment of 1500 Guineas each; Mr. *Elde* is poſitive as to his carrying to the Earl 5000 Guineas in a Dutch Basket; and Mr. *Thurſton* ſwears, he left 5000 Guineas with Lady *Macclesfield*. Now my Lords, as the Earl inſiſts that it was a known Perquiſite of the Great Seal to accept of Preſents upon the admitting new Maſters; why does he not own the Receipt of the ſeveral Sums, with which he is charg'd? If it was a known and eſtabliſh'd Perquiſite, doubtleſs the Sum payable would have been as known and eſtabliſh'd.

bliſh'd. And this Conſideration I apprehend to be the Reaſon of his Lordſhip's Caution. He cou'd not but feel the Abſurdity of his own Argument, and yet I will admit as much as his Lordſhip or his Councel can deſire upon this Occaſion. His Predeceſſors poſſibly may have accepted ſmall Gratuities from new Maſters, *after* their Admiſſion. Therefore *He* may publickly, and without any other Conſideration, *ſell* them to the beſt Bidder for the moſt he cou'd get. My Lords, the Argument wou'd have been juſt as good, during the Time that it was uſual for the Gentlemen at the Bar, to give New Years Gifts to the Chancellor, to prove he might have ſold his Favours, and boldly ſuffer'd no one to plead before him, who wou'd not farm his Practice, and pay the full Price of what it might be worth.

To ſupport this *Imagination* of its being a common Perquiſite of the Great Seal, my Lord *Macclesfield* does in his Anſwer aver, that every one of the Maſters I have named, did *voluntarily and of their own Accord* ſend a Preſent to his Lordſhip *on Occaſion* of their reſpective Admittances. How far it was a Preſent the Evidence I ſhall mention to Your Lordſhips will fully explain. At preſent, I beg Leave to obſerve the Equivocalneſs of theſe laſt Words, *On Occaſion of their ſeveral Admittances.* This was not accidental, but calculated on Purpoſe to make the whole appear like a common and uſual Perquiſite. As the Words ſtand in the Anſwer, the natural Conſtruction is, that theſe Maſters *voluntarily* made the uſual Preſent to his Lordſhip, *after* they were admitted to their Offices: And yet the critical Senſe of the Expreſſion does not exclude the Payment of the Money, even by way of Bargain, *before* their Admiſſion. For even in that Caſe, the Money may as truly be ſaid to have been paid on *Occaſion of their Admittance.* I ſhould not have mentioned this Part of the Anſwer, if it was the only Inſtance of his Lordſhips deviating from Truth. I ſhould have imagin'd it to be an Overſight, of either his Lordſhip or his Councel. But by the Obſervations, that have been made by the Gentlemen who opened the ſeveral Articles Contradiction, Equivocation, and (I wiſh I cou'd not ſay) Untruth ſhine in every Part, and appear to be the predominant Qualities of the whole. My Lords, I mention this, not only as an Aggravation, but even as a Proof. For what Cauſe muſt it be that reduces a Man of the Abilities this Earl is known to poſſeſs, and of the Character *He* did once enjoy, to make uſe of ſuch mean, ſuch contemptible Arts? Arts! Unworthy a great Man; unpractic'd by an innocent Man, and I doubt not, will prove uſeleſs to the Guilty.

The Fact upon the Evidence appears to be thus, *Kinaſton, Bennet, Elde* and *Thurſton*, all concur in this Circumſtance, That they paid their Money before they were admitted into their Offices. Mr. *Cottingham* alſo owns that he received the Money of Mr. *Kinaſton* and Mr. *Bennet*, and carry'd up the Basket of Mr. *Elde* before any of them were ſworn. All theſe Perſons likewiſe agree, and *Cottingham* confirms their Teſtimony, that they apply'd to him as the proper Perſon to recommend them to my Lord *Macclesfield*, and to be inform'd of what Sum they muſt offer, in order to render themſelves acceptable to his Lordſhip. The Evidence of *Kinaſton* proves it to be a direct Bargain, for he ſwears, when he acquainted *Cottingham* of his having agreed with *Rogers* for the Purchaſe of his Place, that he offer'd but 1000 *l.* as a Preſent to the Chancellor: Upon which *Cottingham* ſaid, he wou'd not mention to my Lord any Sum under 1500 *l.* and when *Kinaſton* agreed to give that Sum, *Cottingham* again repreſented that it muſt be Guineas, upon which the 1500 Guineas were paid.

Mr. *Bennet*, he ſays, that when he had agreed with Mr. *Hiccocks*; he alſo applied to *Cottingham* to know what Sum was neceſſary to be paid the Earl. *Cottingham* agreed that a Preſent was neceſſary, but he wou'd not name the Sum. Upon this, after *Bennet* had conſulted with his Brother and Mr. *Godfrey*, he again went to *Cottingham*, and offered 1000 Guineas; but *Cottingham* diſſatisfy'd with this, ſhook his Head, and ſaid, *He would not go to the Chancellor with that Sum, a great deal more had been given, and he hoped he would not lower the Price.* *Bennet* however ſtill preſs'd *Cottingham* to offer the 1000 Guineas, to which *Cottingham* replied, there was *no hagling with the Chancellor*; *and that if he would not give more, he might be abſolutely refuſed, and loſe the Place.* *Bennet* ſtruck with this Reply, agreed to give the 1500 Guineas, tho' *Cottingham* graciouſly told him, he need not bring it in Money, for Bank Bills would do as well. I cannot help obſerving, that there was a ſtrange Caution uſed as to the Payment of this Money, altogether inconſiſtent with the Nature of an eſtabliſhed Fee, or regular Perquiſite. Mr. *Bennet* ſent his Clerk to take out the Bills in a feign'd Name, and for this Reaſon, becauſe otherwiſe they could not ſo eaſily be parted with. *Cottingham* it ſeems, was ſomething jealous of a Man, who had the Confidence to perſiſt ſo long in offering but 1000 Guineas, and therefore the firſt Word he ſaid to him, when he repair'd to the Chancellor to be ſworn in, *Have you brought the Money? Bennet* anſwered like a Man, who perfectly well knew the Family, He ſhould not have ventur'd to have come without it. Upon this the Money was paid, the Maſter was ſworn, and the whole Bargain fully executed.

Theſe kind of Bargains were now become ſo much the Subject of common Diſcourſe, that the Earl thought it neceſſary to be ſomething more Cautious, and even *Cottingham* was not now to be ſo much in the Secret as formerly. Mr. *Elde* applied to the Chancellor himſelf, and without any Ceremony offers his Lordſhip 5000 Guineas for this judicial Office. The Earl it ſeems, was not at all offended with this Liberty, but anſwered with the engaging Familiarity of a great Man; *Thee and I muſt not make Bargains. I will treat thee in a different Manner from others.* My Lord *Macclesfield* was as good as his Word, for upon this *Elde* went to the Secretary, and offer'd him 5000 Guineas, and be reported to his Lord what paſſed: ſo that *Cottingham* was not diſmiſſed this Service at once and the matter was ſo far agreed, that Mr. *Elde* went in a Chair to the Earl's Houſe, with his Basket, in which he ſwears, he put 5000 Guineas, and delivered it to *Cottingham*, who carried it up to his Lord. But at the ſame Time he ſwears, he did not know what was in it. Upon this *Elde* was introduc'd, and ſworn into his Office. Your Lordſhips will obſerve that the BASKET was no Part of the *Bargain*, and therefore the *ſcrupulous Earl return'd it back to him Empty.*

The laſt Perſon examined as to this Point, was Mr. *Thurſton*, and *He* alſo was treated in *a Manner different* from all others. He was certainly better recommended than any of them, and in the Strength of that was very well received. Upon which he was Sanguine enough to expect he ſhould have the Place. But, my Lords, before he was recommended, Mr. *Thurſton* likewiſe apply'd to *Cottingham*, and offer'd 5000 Guineas. *Cottingham* ſaid he would report; but he was not truſted to return an Anſwer.—— In the mean Time Care was taken by the artful ſpreading of Rumors, That Mr. *Thurſton* ſhould hear the Chancellor intended to give the Place away to another Perſon. Alarm'd at this, and ſeeing all other Methods of Recommendation avail'd

nothing, he applied to my Lady *Macclesfield*; and after uſing ſeveral Arguments to no purpoſe, *As that his Name had been printed in the publick News to be the ſucceeding Maſter; That Perſons applied to him for the Buſineſs of the Office; and That his Reputation and Character depended on his Succeſs*; He at laſt told her he did not expect to have the Place for nothing, and therefore he left Bills for five thouſand Guineas upon the Table, and ſo retir'd. Theſe he found were the beſt Arguments, and the beſt Recommendation; for within two or three Days after he was ſworn into the Office. This new Way of Proceeding, deceiv'd even *Cottingham* himſelf ſo much, that he even ſcrupled to take his own Fees. I know not whether I ought to mention any other Particulars; but by the Queſtions put to the Witneſſes, when they were croſs examined, it ſeems as if his Lordſhip would perſuade you, that this was entirely a Tranſaction between Mr. *Thurſton* and my Lady *Macclesfield*, and in which he was in no wiſe concern'd. If your Lordſhips can believe that the Earl intended really to give away this Place for nothing, the Earl will be fortunate: For Mr. *Thurſton* himſelf own'd, he did not think he ſhould have had the Place, if he had not left the Money.

I have repeated this Part of the Evidence more fully to your Lordſhips, becauſe, as I apprehend, it clearly explains the Earl's artful Methods of Extortion, and alſo proves that in this whole Proceeding, *The Money, inſtead of being voluntarily given, was unjuſtly extorted, and that inſtead of being a Preſent or uſual Perquiſite, it was an illegal and corrupt Bargain and Sale of Offices, relating to the Adminiſtration and Execution of Juſtice.*

The laſt Thing I ſhall mention to prove this Point is an Evidence to his Lordſhip, moſt unexceptionable. I mean the Earl of *Macclesfield* himſelf; for my Lords, conſider once more his Anſwer in Relation to this very Point. What Caution! What Equivocation! What Confuſion of Mind! That could make him even forget the time of his own Impeachment. What other Circumſtances of Guilt! That during the Courſe of this Tryal have been viſible to your Lordſhips—Bank Bills taken out in feign'd Names, the Secrecy with which the Money was paid, the dead Silence as to the Price agreed: One five thouſand Guineas in a Basket; another five thouſand Guineas left on a Toilett; and laſtly, his own Declaration to the Maſters almoſt in a Body. How much they, how much himſelf might be affected. I ſubmit to your Lordſhips what Inference is to be drawn from all theſe Particulars. The Commons are perſuaded all flow'd from this Principle, That his Lordſhip, the Maſters, the Seller, and the Buyer, were all conſcious that the whole Tranſaction was illegal and corrupt.

Before I quit this Head of the Charge, I muſt take Notice of that part of his Lordſhip's Anſwer, wherein he hopes that the receiving Preſents on ſuch Occaſions is not Criminal in it ſelf, or by the Common Law of this Realm; and that there is not any Act of Parliament whatſoever, by which the ſame is made Criminal. I hope his Lordſhip intends that the Words, *Or by the Common Law of this Realm* ſhould be underſtood as Explanatory of the Expreſſion, *Criminal in it ſelf*; otherwiſe it ſuppoſes a very ſtrange Diſtinction. For ſurely an Action cannot be conceived to be *Criminal in it ſelf*, and at the ſame time *not contrary to the Common Law of this Kingdom.* Is it poſſible for any one to imagine, that Corruption in the Officer is not the neceſſary Conſequence of being obliged to purchaſe his Place? This is *in Terminis* the Reaſon of the Statute of *Edw.* VI. Is it poſſible for any one to imagine, that Oppreſſion of the Subject muſt not be added to this Corruption? Or, can the Man, who ſells theſe Places, with no other View than to ſatisfy his own Avarice, retain his Integrity, and be a ſevere or competent Check upon the Actions of thoſe Officers, to whom he has ſold? And that is the Reaſon of the Judgment reported by *Moor*, viz. *That the Sale of Offices is* Malum in ſe, *and therefore finable.* But when to what I have now ſaid, I add the Conſideration of the Oath enacted by the *Statute* 12. *Rich.* II. (his Lordſhip will be pleaſed to add his own Opinion and Apprehenſions) I do not conceive it poſſible to doubt, but that *the Sale of Offices relating to the Adminiſtration of Juſtice, is Criminal in it ſelf, Criminal by the Common Law, and Criminal by Act of Parliament.*

Moor 781. *Stockwith* and *North.*

The next Point to which the Commons gave Evidence, is the neceſſary Conſequence of what I laſt mentioned: I mean the admitting Perſons to the Office of Maſters, who were of mean Subſtance, and every way unqualified for that Truſt. The Evidence given of the Deficiency, now in ſeveral of thoſe Offices, is ſo full and unconteſtable, that I ſhall avoid the Repetition of it, and only juſt name Mr. *Thompſon*, and refer your Lordſhips to the Report made to the Council, the Orders of the Court of *Chancery*, and the other Papers now upon the Table. Their being deficient at this time is a violent Preſumption, and that in Point of Law is ſome Degree of Proof, that they were of ſmall Subſtance at the time of their Admiſſion. How elſe is it to be conceived! That Maſters, who have been ſo ſhort a time in their Offices, ſhould be ſo much in Arrear? *Kinaſton* was admitted but in *Auguſt* 1721, and in 1724 there appears a Deficiency of 26,908*l.* *T. Bennet* is admitted but in *June* 1723, and in little more than a Year there is a Deficiency of 16,075*l.* And it is remarkable, that both theſe Maſters have ſworn, all they were Owners of in the World, was not ſufficient to have paid the vaſt Prices they gave for their Offices. Yet theſe Men were choſen out to be truſted, one with near 50,000*l.* and the other with near 100,000*l.* of the Money belonging to the helpleſs and the miſerable. By the skill my Lord *Macclesfield* ſhew'd the other Day, in endeavouring to prove a Man illegally worth a 1000*l.* or 1500*l.* who had own'd himſelf to be worth nothing; your Lordſhips may ſee it was not want of Knowledge how to make an Inquiry, that made his Lordſhip neglect it. It was becauſe he never once concern'd himſelf, whether they had Subſtance or not. The Sum he himſelf was to receive, *was his only Conſideration, and therefore his only Care*; for as Mr. *Bennet* has expreſsly declared, he never once asked him, either before or after his Admiſſion, any one Queſtion in order to be inform'd of his private Circumſtances.

And yet, my Lords, theſe are the Men, whom his Lordſhip, as Mr. *Waller* has particularly ſworn, thought fit in open Court, and while he was ſitting in the ſacred Seat of Truth and Juſtice, to declare *Men of as great Fortunes, Abilities and Skill, as had ever ſat in that Court.* I much more readily concur in the Truth of the other part of his Lordſhip's Declaration, and proved by the ſame Witneſs, *That he had great Satisfaction in the having admitted moſt of the Maſters himſelf.* The Reaſon Mr. *Waller* gave, in Anſwer to ſome quibbling Queſtions of his Lordſhip's, for his particularly remembring this remarkable Speech, is clear and convincing to every Man; *That the Aſtoniſhment he was ſtruck with at the Hearing, made him to remember it.* And happy would it be for his Lordſhip, was it poſſible ever to be forgotten!

But what could make the Earl of *Macclesfield* break out into this Panegyrick? A Reaſon ſo mean, and at the ſame time ſo groſs, that I almoſt wonder even his Lord-

Lordſhip would venture to act upon it in Publick. A Day or two before this happened, a Maſter died, and a new Purchaſer was to be invited.

I have juſt now mention'd the Satisfaction his Lordſhip had in the Sale of theſe Offices. The Effect of which was, that the Earl connived at and permitted the unjuſt Method that was practiſed, for the purchaſing Maſters to pay the Price of their Offices, out of the Money belonging to the Suitors of the Court. This Practice the Commons Charge to have been notorious, and the Evidence produc'd to your Lordſhips prove that it was ſo. *Godfrey*, *Conway*, *Kinaſton*, and *Bennet* ſwore, that this Circumſtance induc'd them to become Purchaſers; and indeed as to them, the Fact proves it ſelf, even though they had not ſworn it to be ſo. For they have both own'd, they were not able to buy without it; nay, they were ſo low, that even the fifteen hundred Guineas they paid the Earl himſelf, was out of the Suitors Money. And thus far the Earl of *Macclesfield* himſelf has own'd in his Anſwer. But alas! That would prove nothing, if it was not accompanied with a Fact, that cannot be disbelieved; *My Lords, He has repaid the Money!*

After this, I think, I need not repeat the Evidence ſo minutely as to explain the particular Method, in which this Fraud was tranſacted. The whole ſeems obviouſly calculated for no other End or Purpoſe, than to induce Perſons of ſmall Abilities to become Purchaſers, by facilitating and making eaſy the Method of Payment. And indeed it was ſo eaſy, that I wonder his Lordſhip did not meet with Perſons, who would agree to give one half of the Money, for an opportunity of running away with the other. And if they had, I do not ſee but his Lordſhip's Defence would have been juſt as good as it is now. Such a Price might with as much Reaſon be called a Perquiſite, as his condeſcending to take but five or ſix thouſand Guineas, when no one would give more. It is true, my Lord *Macclesfield* does in his Anſwer ſay, that he was ignorant of this Practice. But I apprehend his Lordſhip to be as much miſtaken in this, as he has been in other Particulars. For, my Lords, it appears by Mr. *Bennet*'s Evidence, that he not only knew of this Practice, but endeavoured to conceal it.

It happened that when this Mr. *Bennet* delivered his Accounts to the Privy Council, he concluded with a very remarkable Article; *Item, In the Hands of Perſons of Ability and Honour* 9075 *l.* My Lord *Macclesfield*, at ſight of this Particular, asks him the Reaſon of it; Mr. *Bennet* explains it, That as to 1575 *l.* he meant his Lordſhip, and as to the Reſidue, Mr. *Hiccocks*, of whom he bought, had detained ſo much of the Suitor's Money in his Hands, by way of Payment for his Place, and at the ſame time he complained to his Lordſhip of the Hardſhip with which he had been us'd. The Conſideration that induced him to give ſo large a Price, was his being immediately to receive a very large Caſh; and yet the firſt time he waited on Mr. *Hiccocks* for that purpoſe, he could get but 1500 *l.* and that upon the hard Terms of giving a Receipt for 9000 *l.* During this Converſation, *Bennet* ſwears, the Earl ſaid with ſome Concern, *That his Accounts were made up the worſt way in the World, for every Body would now judge, that what he paid for his Office, came out of the Suitor's Money, and that what had been ſo much ſuſpected would be now diſcovered, and what he himſelf had taken ſo much Pains to deny, whenever he was asked the Queſtion.* After this his Lordſhip and *Bennet* enter into a ſerious Conſultation, how to make up this Affair. The Chancellor bids him go to Mr. *Hiccocks*, to try what he would do. But it ſeems he could not be brought to do more, than to lend 2000 *l.* which *Bennet* abſolutely refuſed, and inſiſted upon its being *given him, or not at all.* He reported this to the Earl, who diſpleas'd at it, ſaid, *Hiccocks* ſhould pay 2000 *l.* and that he himſelf would repay the 1575 *l.* but it ſhould be in ſuch a manner, as that *Bennet* ſhould not know in what manner it was done. Moſt profound Politicks this! *Bennet* afterwards told your Lordſhips, that he found the Earl intended to trick him out of this Money; for ſeveral Times and Places were appointed for Payment, without any Effect. And therefore the Accounts were delivered in, and the Story comes out. Your Lordſhips certainly obſerv'd, that my Lord *Macclesfield* was very much offended with Mr. *Bennet*'s Evidence, and therefore took Care to croſs examine him moſt accurately. But that Fatality which conſtantly attends Guilt, was ſo ſtrong upon him, that the Anſwers given by this and almoſt every other Witneſs, to the Queſtions propos'd by the Earl, and his Councel, evidently, as I apprehend, deſtroy his own Anſwer, and confirm our Accuſation. But, my Lords, it is not only the Anſwers of the Witneſſes, but even his Lordſhip's own Queſtions that afford Evidence againſt him. For to what part of the Charge am I now ſpeaking? Why to that, wherein he is accus'd of knowing and endeavouring to conceal the Practice of paying the Purchaſe out of the Suitor's Money. And what does his Lordſhip ask? *Did not you at this Meeting tell me, that if* Hiccocks *would pay* 2000 *l. you then would make up the reſt your ſelf?* By his Lordſhip's own Confeſſion therefore, *Bennet was* with the Earl upon this Occaſion; they *did* talk upon the Subject *Bennet* has inform'd your Lordſhips. *Hiccocks* retaining the Suitor's Money, *was* part of the Converſation. Elſe why ſhould he pay 2000 *l.*? His Lordſhip *did* concert how to make up this Affair, and conſequently how to conceal the whole. To this Queſtion of the noble Lords *Bennet* anſwers conſiſtently with what he had ſaid before, *That he did not ſay, if Mr.* Hiccocks *would pay* 2000 *l. that then he would ſtand the reſt.* And the Reaſon he gives is good, *He was not worth the Money.* Your Lordſhips remember the other part of the Dialogue. I ſhall only add, That the Earl being angry at this Evidence, asks Mr. *Bennet*, *And how could you, as an honeſt Man, offer to buy a place, when you were not worth the purchaſe Money?* I ſubmit to your Lordſhips, whether it was not as honeſt for him to buy without Money, as for his Lordſhip to ſell without Right.

I have now ſtated to your Lordſhips the Fact, as to this ſcandalous Practice. And I think it can never be thought reaſonable to ſuppoſe the Earl of *Macclesfield* only ignorant of what every one elſe knew: Or that he did not know of what he endeavour'd to conceal. And if it is certainly true, that the Office of Chancellor is an Office of the higheſt Truſt, it is as true, that every wilful Neglect of what is neceſſary to be done, in order to diſcharge that Truſt, is criminal. It cannot be doubted, but that this Practice was unjuſt, and fraudulent upon the Suitors of the Court. It cannot be doubted, but that the Earl of *Macclesfield* knew of this Practice. It cannot be doubted, but that the Chancellor was the proper Perſon, becauſe in Fact, he was the only Perſon, who could, *ex Officio*, either remedy or prevent this Abuſe. What ought to be the Conſequence of theſe Premiſes, the World will learn by your Lordſhips Judgment.

Hitherto my Lord's Avarice, *uncorrupted Avarice!* has been the only Principle of this Earl. In what follows, your Lordſhips will perceive Apprehenſion and Fear begin to mingle in all his Actions; and for this Reaſon the Bankrupcy of *Dormer* was to be concealed, that the Clamours of the World might be huſhed. It has appeared in Proof to Your Lordſhips, that upon *Dormer*'s abſconding the Deficiency in his Office amounted

mounted to upwards of 52,000 *l.* for the Account upon the Table which reduces the Ballance to 49,000 *l.* was made up long after the Masters had been obliged to contribute their 500 *l.* each.—— When *Dormer* run away, it is natural to imagine, that even this Chancellor should have turned his Thoughts to the Security of the Suitors: Not because it was his Duty so to do, but as Mr. *Dormer* was a Master whom he had not had the Satisfaction to admit himself, he might with the more Security have given himself the Show at least, of acting vigorously in Relation to his Affairs. By the Evidence that has been given it appears his Lordship's Behaviour was quite the Reverse; my Lord *Macclesfield*, instead of being Sollicitous for the Good of the Suitors, was apprehensive only of the loss that might happen to himself, by sinking the Price of Places, and thereby defeating that gainful Trade he carried on in the Sale of them. But this Thought was attended with another Consideration, that this open Acknowledgement of the Bankrupcy of one Master might enduce the World to suspect the Abilities of the rest, and as he best knew what Care, what Circumspection he had used upon their Admission, so he was determined to prevent an Incident of that kind. With these Views therefore every Step that was taken was mysterious, and the Deficiency itself with the utmost Caution kept secret; so secret, that at last some of the Masters themselves, his own Masters, for that very Reason, refused to contribute any farther towards it. *It is a bottomless Pit*, says one; *we know not what it is*, says another.

The first Step the Earl took was to direct Mr. *Rogers* and Mr. *Hiccocks* to carry on a private Negotiation with *Dormer*, for his Return into *England*, assuring him in his Lordship's Name, that his Person should not be confin'd, provided he made an Assignement and Discovery of his Estate and Effects. Upon this *Dormer* returns, and executes an Assignment; but I do not find he was ever examin'd upon Interrogatories, or that any of his Creditors attended, in Order to enquire into the Truth of his Discovery. Your Lordships observe, that the Promise of Liberty was Conditional; but *Dormer*, and the Earl, tho' for very different Reasons, were equally afraid of this Commitment; and therefore his Lordship took Care not to direct any Proceeding, that might lay him under a Necessity of doing it. If there was nothing else in the Case, this Behaviour was sufficiently Gross. But, my Lords, it was still worse, for Mr. *Lightbourn* has acquainted Your Lordships, that soon after *Dormer*'s Failure, he waited on my Lord *Macclesfield*, and told him, that he suspected the Account given in by *Dormer* was not Fair and Just; and that therefore he ought to be committed for Example sake. This Witness added another Circumstance, that justifies what I have before suggested to Your Lordships, as the Reason of the Earl's Conduct. He says, that in this Conversation with his Lordship he intimated and gave broad Hints of his suspecting the Abilities of some of the other Masters; he represented that the Year 1720 had been a very fatal Year, and might affect the Masters as well as other People; that what had been might be, and several other matters of this Nature. Your Lordships remember the manner, in which this Evidence was given, there was an Air of Probability and Truth, that appeared in it; he own'd indeed, when the Noble Earl ask'd the Question, for fear, I suppose, lest Your Lordships should want Proof of there having been such a Discourse, that he did not name any Master in particular whom he suspected. He did not know how far an Action might lye, and if known, it would make him unacceptable to his Brethren, and himself might be made uneasy in his Office, and several other Reasons of that kind; and therefore he chose to express himself in general Terms. Your Lordships will observe that the Earl was very early in this Resolution, some way or other, to patch up this Affair of *Dormer*'s, so far at least, as to make it last his Time: For Mr. *Kinaston* has informed Your Lordships, that when he was in Treaty with Mr. *Cottingham*, to be admitted Successor to Mr. *Borret*, he objected this very Deficiency of *Dormer*'s as a Reason why the Chancellor should not insist upon so large a Sum, since the Consequence of it must naturally lessen the Value of the Office. But he made light of it, and said, it would soon be made up. Mr. *Edwards* also, who succeeded *Dormer*, said he never would have bought the Office, if he had not been assured the Deficiency would have been made good. Here Your Lordships may also remember, that my Lord *Macclesfield* by cross examining this Gentleman, laboured to prove, that the Masters had actually agreed, in all Events, to make good *Dormer*'s Effects. Mr. *Edwards* said, *he could not say 'twas actually agreed, he hoped they would, and by Conversation he had had, imagined they were inclined so to do*, &c. Upon this the Earl asked, *From whom then had you those Assurances that it would be done?* His Lordship (ever fortunate in his Questions!) I believe was not well satisfied with the Answer; for says *Edwards*, *I had 'em from Cottingham and Godfrey*. Their Names and Qualifications are well known to Your Lordships.

The next Step that was taken, relates to the Composition of a Debt of 24,046 *l.* due from one *Wilson* a Banker, to the Estate of Mr. *Dormer*. This Composition the Commons do aver the Earl did direct and establish, in an unwarrantable and clandestine manner. On the other hand, my Lord *Macclesfield* does in his Answer say, that it was done in the proper and usual manner: Your Lordships will judge of the Truth between us. The Commons, to prove their Averment, have produced the Original Instrument of Composition, by which it appears that this Debt of 24,000 *l.* was to be discharged for the Sum of 1463 *l.* in Money, and an Assignment of 10,000 *l.* or a proportional Part of what should be recovered of a desperate Debt of 22,600 *l.* due from one *Poulter* (who also is a Bankrupt) to *Wilson*.

The Introduction to this Affair was thus; Mr. *Edwards*, to whom *Dormer* assigned his Effects, acquainted the Chancellor that *Wilson* proposed a Composition, but apprehended he had not Power to conclude any such Agreement. To this the Chancellor agrees, and therefore advised him to apply to the Court by way of Petition for that Purpose. *Edwards* followed this Advice, and petitioned. Upon which the Earl referred the matter to Mr. *Hiccocks*, who made his Report, which being annexed to another Petition, the Composition was confirmed. In the Answer which the Earl gave to the second Petition, these Words are inserted, *Of which give Notice forthwith*: To what Purpose these Words were inserted, I cannot comprehend, unless it was to deceive the poor Master, who trusted him, into Ruin, by craftily laying a Ground Work for throwing the Blame of the whole upon him, unless he could divine to whom this Notice was to be given. For his Lordship took Care not to give any Directions, as to what Persons, or in what manner it should be done.—— During this whole Transaction *Wilson* was never examined upon Interrogatories: No one Creditor ever summoned to attend; the Character of *Poulter* perfectly unknown, or by what they did know, they might have reasonably suspected what afterwards happened: No Knowledge of *Wilson*'s Affairs, but what he communicated himself; the first Proposal he made was accepted; no Consultation with any other of *Wilson*'s Creditors; and to show how useful that might have been, it has been proved to Your Lordships, that *Wilson* has paid several of his Creditors their whole Debt.

This

This was the Care the Earl thought fit to take of the Suitors of the Court: Doubtleſs he imagin'd, that tho' more vigorous Meaſures might ſecure more Money, yet they might at the ſame Time make the Circumſtances of the Court too publick; for, at the ſame Time his Lordſhip took abundant Caution to prevent any of theſe Particulars coming to the Knowledge of the Suitors, or of the World. For, my Lords, not one of theſe Facts appear upon any Record or Regiſter whatſoever; the Whole was a private and clandeſtine Tranſaction between his Lordſhip, two or three Maſters, and the Bankrupt himſelf. Your Lordſhips have a Certificate from the proper Officers for what I now ſay, *That none of theſe Petitions, Reports, or Orders, were ever regularly drawn up, or filed.*

My Lords, this Caution, this Secrecy, this Myſtery, is a ſtrange Way of proceeding for Juſtice and Equity; but, if the contrary be ſuppoſed to have been his Intentions, the Whole is of a Piece, natural and conſiſtent.

Permit me, my Lords, once more to obſerve upon his Lordſhip's Croſs-Examinations. And, Firſt, He very nicely examin'd *Edwards*, as to what he had receiv'd by virtue of this Compoſition; and certainly it receives a wonderful Juſtification from Mr. *Edwards*'s owning that he received in *October* laſt 1000 *l.* The next Point he examin'd to, was his Lordſhip's Diligence in ſecuring *Dormer*'s Effects. The Commons brought Evidence to ſhew, that ſome of *Dormer*'s Eſtate had been conceal'd, and, for ought I know, it may be true, that one *Goodfellow*, by his Lordſhip's Means, did give the Adminiſtrator (appointed ſince his Lordſhip's Diſmiſſion) the firſt Notice of it. The Fact is, that a Parcel of old Hops, 500 *l.* the worſe for keeping, were not long ſince ſold for the preciſe Sum of 100 Guineas. To which I ſhall only ſay, that I wonder his Lordſhip choſe to recal *that Sum* into your Lordſhips Memory.

My Lord *Macclesfield* hitherto might poſſibly meet with the Approbation of thoſe Maſters, on whom he vouchſafed to ſmile: Both he and they ſeem to have conſider'd themſelves as in an Intereſt ſeparate, and quite oppoſite to that of the Suitors. *His* View was to keep the Circumſtances of the Court ſecret, and to prevent any Thing that might happen to leſſen his Profits in the Sale of Places: *Theirs* was to retain the Money of the Court in their Hands, and for that Reaſon to huſh any publick Clamour that might occaſion the taking it away. I think I am not miſtaken in this Conjecture, becauſe I find his Lordſhip himſelf was of the ſame Opinion: For this was the great Artifice and Machine, which his Lordſhip employ'd, to terrify them into a Contribution of 500 *l.* each, towards ſupplying the Deficiency of *Dormer*'s Office. To ſhew how much this Cuſtody of the Money was in the Maſters Thoughts, your Lordſhips will be pleaſed to remember, that all the Maſters own'd, that it made a very conſiderable Article in what they call'd, the Profits of their Places. Mr. *Holford* (on whom the only Blemiſh I know, is the Misfortune he has had of being a Maſter) acknowledg'd, in anſwer to a Queſtion propos'd by a Noble Lord, *That he underſtood it ſo; for he never propos'd to lock the Money up, but to employ it for his own Uſe.* In fact, it was what the Maſters bought, and what the Chancellor ſold, or rather, Widows, Orphans, Lunaticks, the Wards and Suitors of the Court were the wretched unhappy Merchandize, in which the Earl of *Macclesfield* thought fit to deal. When *Kinaſton* was to buy, he ſwears that *Cottingham*, or *Rogers*, or both, recommended it to him as being the Senior Office, and therefore the beſt. And *Cottingham* himſelf own'd the firſt Day of this Tryal, that he had acknowledg'd to a Committee of the Houſe of Commons, that he ſaid to Mr. *Kinaſton*, *You have purchaſed a very good Office; for there is a great deal of Money in it.* But, my Lords, the Thing proves itſelf: Conſider the Nature of the Office, the Attendance and Labour that is required; deduct the unlawful Intereſt made of the Suitors Money; how can the honeſt Fees (even ſuppoſing it lawful to ſell) be worth 6, 7, 8, or 9000 *l?* I leave this for my Lord *Macclesfield* to explain, and ſhall at preſent take it for granted, that the Maſters eſteem'd the Cuſtody of the Money to be Part of their Bargain.

That there was, in fact, a Contribution by the Maſters of 500 *l.* each, is evident from the Receipts now upon your Lordſhips Table; and Mr. *Holford* fully explains the Method that was taken to draw them into it. He received, ſoon after the Report of *Dormer*'s Bankruptcy, an Order from Mr. *Cottingham* to prepare and bring in his Accounts to the Chancellor; ſoon after that, it was intimated to him, that a Contribution of 500 *l.* was neceſſary towards ſupplying the Deficiency of *Dormer*: Upon which he paid his Money, and his Accounts (tho' ready, as he ſwears expreſly) were never afterwards called for.

Lightboun was another Maſter, who received Orders to prepare his Accounts; but not paying his Money, *Cottingham*, ſome ſhort Time after *Dormer* broke, ask'd him if he had not heard of the Propoſal to contribute 500 *l.* *Lightboun* own'd he had: *Cottingham* then ſaid, 'twas neceſſary to raiſe ſome Money to go on, and that, if he contributed, poſſibly the Money might be repaid. Still *Lightboun* was inflexible, and ſaid it was a dangerous Step, and he wou'd not pay the Money. Upon this Refuſal, he inform'd your Lordſhips, that he was look'd upon as a very troubleſome Fellow among the Maſters, and little Arts were us'd to make him uneaſy in his Office: But when this likewiſe prov'd ineffectual, the Earl himſelf, at laſt, condeſcended to talk with him, and in the beginning of the Year 1722, he was taken into his Lordſhip's Study; and the Earl told him, he was ſorry to hear he did not pay; deſired him to conſider the Conſequences, and how dangerous it was, not to take Care of *Dormer*'s Affair. Upon this, *Lightboun* ſtill refus'd to pay, ſaying he did not know how far a Contribution of this Kind might be conſtru'd to be an Undertaking of the Maſters to anſwer one for the other: At the ſame Time he boldly and honeſtly repreſented to the Chancellor, how cautious his Lordſhip ought to be; that this Method was no Cure for the Miſchief; and that as to its being propos'd by the Senior Maſters, 'twas no Argument to him, and ought to raiſe ſome Jealouſy in his Lordſhip, ſince they were viſibly endeavouring to withdraw from the Court, and came into a Project of this Kind, only to keep up the Credit of the Court, till they found an Opportunity of ſelling their Places at great Rates, and a great deal more to this Purpoſe; and concluded with a peremptory Refuſal to contribute.

However, as the other Maſters paid their Money, the Earl was not diſcouraged, but depended upon it that ſome Time or other (as he told Mr. *Edwards*) he ſhould be able to force Mr. *Lightboun* to comply, and therefore, as he thought, he had by this Means contriv'd a Fund to anſwer any Demands upon Mr. *Dormer*'s Office, he went on, juſt as if there had been no Deficiency at all. By the Orders that have been read to your Lordſhips, and by the Evidence of Mr. *Edwards*, who paid the Money, it appears that he made ſeveral Orders for the Payment of Money, without any Regard to that due Proportion all the Suitors of the Court were entitled unto. His Lordſhip in his Anſwer ſays, It was not incumbent upon him, *ex officio*, to declare an Average. If it was not his Duty, my Lords, for God's ſake, whoſe Duty was it? This is too groſs to be a Sin of Ignorance. A Barriſter of but a Term's ſtanding knows, nay, it is obvious to the loweſt Capacity, that where ſeveral Perſons have Demands out of one Common Fund, and that Fund proves to be defective, all ought to be upon the ſame Foot, and be paid in an equal Proportion. Mr. *Lightboun*, Mr. *Edwards*, both repreſented to him the Hardſhip of one Creditor's receiving his whole Demand, and another Creditor, who had equal right, loſing his whole Debt. The Reaſon therefore of this otherwiſe abſurd Proceeding cou'd only be, that the Declaration of an Average wou'd publiſh that Deficiency to the World, which he had us'd ſo many Stratagems to conceal.

I cannot conclude this Part of the Evidence, which relates to that Criminal Deſign the Earl carried on of concealing this Deficiency, and of deceiving the Suitors of the Court, without reminding your Lordſhips of one other Inſtance of this Noble Earl's great Regard for Truth and Veracity. Mr. *Atwood*, who was the Sollicitor in the Cauſe of *Harper* and *Chaſe*, in which the Deficiency of *Dormer* being mention'd, the Earl took occaſion to declare, *That indeed he had heard of the Deficiency, but nothing of it had ever come judicially before him; and that he knew nothing of it but as publick News.* This, my Lords, was after he had paid 1000 *l.* towards it himſelf. After what I have ſaid, I ſhall not attempt to aggravate this Proſtitution of the Seat of Juſtice. But this did not ſatisfy his Lordſhip: That his Diſſimulation might for ever remain upon Record, he thought fit to pronounce an Order, that is now upon your Lordſhips Table, and dated no longer ago than in *December* laſt; in which he directs the Maſter to enquire, whether there was any Deficiency in *Dormer*'s Office? and whether the Suitors were likely to loſe any Part of their Money, or not?

Your Lordſhips know the Contract that was made between the Chancellor and the Maſters: I therefore ſhall not waſte your Time in mentioning Evidence to prove, that they, who gave ſuch vaſt Prices for the Cuſtody of the Money, did not neglect the Opportunity of employing it for their own Uſe. The Proof is but too viſible: They who are rich, confeſs it; and they who are poor, dare not deny it: It was the neceſſary Conſequence of his Lordſhip's Extortion; and that put it out of his Power, to take thoſe Meaſures that were neceſſary to prevent that Practice. The Misfortunes of the *South-Sea* Year were ſo univerſal, that ſurely any Man of even common Senſe wou'd have been upon his Guard: *My Lord* Macclesfield *knew*, that theſe Maſters gam'd with the Suitors Money themſelves, or for an extravagant Intereſt lent it to thoſe who did: *He knew* that this was the occaſion of *Dormer*'s Deficiency: *He knew* that the other Maſters had it ſtill in their Power to do the ſame; therefore he permitted it: He took no Meaſures to prevent it; therefore he encourag'd it.

But what cou'd engage this Earl (whoſe Underſtanding is no wiſe queſtion'd) after ſo fatal a Year, thus to riſque his own Character; and what perhaps he values more, his own Fortunes, not only upon the Underſtanding, the Integrity, but even the good Fortune of a parcel of Men, whom he had thus pick'd up, without either Enquiry or Care? My Lords, *as the Borrower is to the Lender, ſo a Corrupt Chancellor is the Servant of his Confederate Officers.* He durſt not put a ſtop to their Practices (tho' his own Eſtate was embark'd with theirs) leſt Reſentment and Revenge ſhou'd make 'em diſcover the infamous Secrets, with which they were entruſted. How durſt he demand Security from thoſe whom he had admitted, knowing they were able to give none? Surely, my Lords, no Reaſon, but ſuch as I have now mention'd, cou'd induce his Lordſhip to neglect (and a long Neglect amounts to a Refuſal) the obliging theſe Maſters to give Security, or elſe to call them to a ſtrict Account, as to their Caſh and Securities, after he had been inform'd by Mr. *Lightboun*, that ſome even of the Maſters were to be ſuſpected. But Mr. *Lightboun* this Day went farther; he repreſented the Danger of truſting Men with ſuch vaſt Sums: That this Credit had been the occaſion of all the Loſſes in the Court, and therefore propos'd a Scheme of Security, to prevent any Loſſes for the future. The Chancellor did not abſolutely reject this Propoſal; that was too groſs *even for himſelf:* He therefore deſires Mr. *Lightboun* to put it in Writing: 'Tis done; and his Lordſhip moſt carefully kept it by him for two Years, without taking any notice of it. But, my Lords, there is one Circumſtance in this Neglect, that in Equity (and ſurely a Chancellor will not decline to be try'd by that Rule) makes his Lordſhip anſwerable for a very large Sum in one Caſe only, without entring into any the other Conſequences of his Crime. Mr. *Kinaſton*, your Lordſhips remember, was prov'd to be deficient in the Sum of 26,000 odd hundred Pounds; and yet, my Lords, this very *Kinaſton* did, in the Year 1722, propoſe to his Lordſhip, to give Land, or other Security, for the Effects with which he was entruſted. I know his Lordſhip will object what this Gentleman has before ſworn, in relation to his own Circumſtances: But what is it to the Suitors, whoſe Land it is, provided it be pledg'd for their Safety? *What Anſwer, my Lords, muſt we give to our Fellow-Subjects, thoſe unhappy People, who are undone, I will not ſay by* Kinaſton's *and the other Maſters Deficiency, but his Lordſhip's own wilful Neglect?* I will not take up any more of your Lordſhips Time upon this Head. In what I have already mention'd, it is proved, notwithſtanding what the Earl in his Anſwer ſays to the contrary, that he knew the Maſters converted the Money of the Suitors to their own Uſe. And he himſelf owns, that he did not inſiſt upon any Security from them. In a late Order of his own making, he has recited it not to be uſual in the Court of Chancery,

Chancery, for the Maſters to give Security; and therefore in his Anſwer covers himſelf under the Practice of his Predeceſſors. My Lords, the Reaſonableneſs and Neceſſity of Security depends upon the Greatneſs of the Truſt committed, and the Qualities of the Perſons intruſted. In Dr. *Eddiſbury*'s Caſe, tho' there was a Stop, yet there was no Loſs, for his Eſtate prov'd ſufficient to anſwer all Demands. And therefore his Lordſhip's Argument, in my Apprehenſion, amounts to this, That becauſe his Predeceſſors did not inſiſt upon Security from Perſons who wanted none, therefore he might juſtly entruſt thoſe who were able to give none.

My Lords, I am come to the laſt Head of our Charge, and your Lordſhips will now ſee the Earl of *Macclesfield* abandon'd to all his Fears! even Avarice forſakes him! The Dread of a Parliamentary Inquiry ſits heavy on his Mind; and I firmly believe, he now repents his having illegally taken this Money, becauſe he parts with it to prevent, if poſſible, that Puniſhment he moſt juſtly deſerves for having received it. He finds all his Arts in vain to hinder his Practices being known to the World; and therefore his whole Study is now bent how to ward off their coming into Parliament.

The firſt Inſtance of this appears in the Caſe of Mrs. *Chitty*. The Fact is thus: An Order was made for the Payment of 1000 *l.* to her, Part of a Sum upwards of 11,000 *l.* belonging to her, and which had been paid into the Hands of Mr. *Dormer*. She, it ſeems, aſſigns this Order to a very importunate Sollicitor, one Mr. *Lockman*, who, as he has told your Lordſhips, diligently purſu'd the Chancellor from *London* to *Kenſington*, from *Kenſington* to *Weſtminſter-Hall*, and the Court of *Chancery* it ſelf. He repreſented to his Lordſhip the Circumſtances he was in; that he had compounded ſome *South-Sea* Contracts, and abſolutely wanted, and inſiſted upon his Money to compleat his Agreement, and ſet himſelf at Liberty. The Chancellor finding himſelf ſo preſs'd, was at laſt forc'd to promiſe him, that he would take care to get the Money paid. Upon this he ſummons a meeting of the Maſters, in order to perſuade them to pay the Money, by a Contribution of fifty Pounds each; and in the mean while it had been given out among them, that ſuch a Contribution was expected. *Cottingham* himſelf, as Mr. *Lightboun* ſays, told it to him, and at the ſame time made a freſh Demand of the old Sum of 500 *l.* and ask'd him what Anſwer he would ſend to the Chancellor? *Lightboun* prudently replies, he would deliver his Anſwer himſelf; and in the mean while he applies to the other Maſters, tells them the ill Conſequences of what they had done, and works them all up to a Reſolution not to comply with this freſh Demand. He deſires 'em not to give the Chancellor falſe Hopes, but to ſpeak their Mind freely. And thus prepared, they all repair to his Lordſhip's Houſe. I need not upon this Occaſion repeat the Names of the Witneſſes, for all the Maſters preſent concur in giving the ſame Teſtimony. His Lordſhip began the Conference with asking Mr. *Lightboun*, in a very angry Tone and Manner, why he did not pay his 500 *l.*? Who reply'd, he had often told his Lordſhip the Reaſon, and that he neither cou'd nor wou'd pay, and was confirm'd in his Reſolution, by his having ſince heard all, or moſt of his Brethren, repent of their Compliance. The Earl, without regarding *Lightboun*'s Reaſon, propos'd the Neceſſities of the Court to the other Maſters, in relation to this 1000 *l.* The Maſters not ſeeming willing to comply, he us'd many Arguments to perſuade 'em to it: He deſires 'em to conſider the Conſequences; the Occaſion preſſes, and Clamours grow ſtrong; and if this Affair was not taken care of, *Dormer*'s Deficiency muſt break out; and therefore what he propoſed, was the only way to prevent a Parliamentary Inquiry. Upon this *Lightboun* interpos'd, and ſaid, If it was ſo, he could not help it: That he had rather loſe the keeping of the Money and Securities, than hold it upon thoſe Terms. The Chancellor reply'd, But that is not the worſt: Suppoſe the Houſe of Commons ſhould in a Committee of Juſtice reſolve, that your Offices relate to the Adminiſtration of Juſtice; that the Buying 'em is contrary to the Statute of *Edward* VI. and therefore forfeited. Conſider (ſays he) tho' it may affect me, as to the Diſpoſal of theſe Places for the future, yet it will affect you much more in the Loſs of your Places; and therefore, upon the whole, deſired them to agree to the Contribution. My Lords, the Maſters were Proof againſt his Lordſhip's Eloquence, and *ſeriatim* refus'd to comply. Upon which the Earl was ſtruck, and with a vaſt Concern ſaid, Then I will pay it my ſelf. What Guilt, what Fear, muſt this Noble Earl be ſenſible of, thus to part with that Money he had ſo ſacrific'd his Honour to get! In this manner the Earl parted with his Maſters, and *Lockman* returns again to the Charge; and at laſt, meeting the Chancellor in the Room behind the Chancery Court, he got a Promiſe from him, that Mr. *Cottingham* ſhou'd pay the 1000 *l.* But at the ſame Time his Lordſhip (I ſuppoſe, to get rid of ſo troubleſome a Suitor) adviſ'd him not to engage with the Widow *Chitty*; for if her Money in the Court of Chancery was all her Fortune, that Sum was all ſhe was like to have. Soon after this, *Cottingham* paid the Money. But it ſeems he forgot to deſire *Lockman* to keep the Secret; ſo he told it about ſo much, that *Cottingham* meeting him rebuk'd him for it, ſaying, *Can't you fare well, but you muſt cry Roaſt Meat?* Your Lordſhips undoubtedly remember, that the Earl endeavoured to ſhew, by Croſs-examining, that he had generouſly given this 1000 *l.* to Mr. *Lockman*, out of meer Charity and Compaſſion to his miſerable Circumſtances. *Lockman* reply'd very reaſonably, that his Circumſtances were not ſo low as to want his Charity; for he might have diſcounted the Order; and he did not think it a Favour that he was paid his own.

The Evidence I have now laſt mention'd to your Lordſhips, even without the Aſſiſtance of other Proof, almoſt maintains the whole Charge. By the Teſtimony of a Cloud of Witneſſes his Lordſhip here confeſſes the Sale of Offices, and owns that Sale to be illegal: He acknowledges his being acquainted with *Dormer*'s Deficiency; and at the ſame time endeavours to conceal it: He in a manner confeſſes his own Guilt, pronounces Sentence upon himſelf, and therefore propoſes Methods to prevent a Parliamentary Inquiry.

But, my Lords, there is ſtill more behind: There is not only a Connection among the Articles, but the Crimes charg'd in 'em riſe upon each other. Hitherto his Deceit has extended only to the Subject, but now he attempts the Throne it ſelf. His Majeſty graciouſly directed an Inquiry to be made into the Diſorders of the Court of Chancery. His Lordſhip knew that this dutiful Houſe of Commons wou'd not interpoſe in the Affair, till his Majeſty's Commands were obey'd, and therefore he now ſummons all his Arts and Skill to ward the Blow, and deceive his

his Majeſty into a Belief, that the World had taken a falſe Alarm; and that the Circumſtances of the Maſters were much better than they were repreſented to be: That they were able to anſwer all Demands; and that conſequently the Suitors of the Court were not in any Danger. His Agents are ſent among the Maſters, to encourage them to ſtand by each other; that they ſhould make a bold Stand, and defeat the Deſigns of their Enemies. He himſelf becomes their Councellor, and adviſes, and (without Inquiry, or Regard to either Truth or Juſtice) he perſuades them to make ſuch a Subſcription to their Accounts, as might miſlead the Council in any Report they ſhould make to his Majeſty.

All his Thoughts, Counſels, and Meaſures, are now ſwift and precipitate. Your Lordſhips have heard Evidence of the ſeveral Diſcourſes of *Cottingham* and *Dixon*; the meeting of the Maſters at Mr. *Edwards*'s, and the laſt Conference with the Chancellor himſelf; all within two or three Days of each other, and all tending to the ſame End of deceiving the King, and preventing the Parliament. My Lords, all the Maſters concur in the meeting at the Chancellor's Houſe; when, it ſeems, his Lordſhip, upon conſidering their ſeveral Accounts, declared his Approbation of Mr. *Holford*'s Subſcription; and without any the leaſt Inquiry into their Abilities and Circumſtances, he adviſ'd them all to make the ſame Subſcription as Mr. *Holford* had done.

Your Lordſhips have likewiſe heard it prov'd, that the Maſters, in order to make a Shew, were adviſ'd to aſſiſt and ſtand by each other. *Bennet* and *Conway* are both Inſtances of this Counſel's being put in Practice; and —— But why ſhou'd I abuſe your Lordſhips Patience with particularly recapitulating the Evidence that has been this Day given? I obſerv'd the Attention with which it was heard, and any Thing I can ſay, will only weaken that Impreſſion it muſt naturally have left on your Lordſhips Mind. I ſhall therefore conclude the Whole with an Obſervation from the Parliament-Roll of *Henry* IV. *Complaints and Subſidies belong to the Commons, Judgments belong to the Lords, and Redreſs is the Glory of the Crown.*

My Lords, The Commons have now diſcharg'd their Duty; they have declar'd their Grievances, explain'd the Crimes, and produc'd the Offender. They are aſſur'd the King will of his Fatherly Goodneſs, grant a juſt Redreſs, and apply a proper Remedy; and they doubt not but your Lordſhips will pronounce a righteous Judgment.

Then the Houſe adjourned to Wedneſday *next, at Ten of the Clock in the Forenoon.*

Wedneſday, May 12. *The fifth Day.*

THE Lords being ſeated in their Houſe, the Serjeant at Arms made Proclamation for Silence; as alſo another Proclamation, That all Perſons concerned were to take Notice, that *Thomas* Earl of *Macclesfield* now ſtood upon his Tryal, and they might come forth, in order to make good the Charge.

L. C. J. King. Gentlemen, You that are Councel for the Earl of *Macclesfield*, may now proceed.

Mr. Serjeant *Probyn.*

May it pleaſe your Lordſhips,

I HAVE the Honour to be Councel for the Noble Lord within your Bar, the Earl of *Macclesfield*, who ſtands impeach'd for High Crimes and Miſdemeanors in the Name of all the Commons of *Great Britain.*

My Lords, When I conſider the Importance of this Charge, in reſpect to the Noble Earl impeach'd, the great Experience and wiſe Conduct of the ſeveral Gentlemen of the Houſe of Commons, who are intruſted to manage the Proſecution, and the great Variety of Arguments they have uſed to enforce and aggravate their Charge, it is with the utmoſt Concern that I preſume to appear before your Lordſhips in his Defence; not but that I am well aſſured of the Truth and Juſtice, the Strength and Fulneſs of the Defence which may be made in his behalf, but out of real Conſciouſneſs of my own Inability to diſcharge ſo great a Truſt.

Unequal to it I ſhould have been, had the longeſt Time been allowed me to prepare myſelf; but I ſhall now appear much leſs capable, having ſo very little, ſo few Days Notice of your Lordſhips Pleaſure in appointing me for that Service.

If therefore I ſhall be ſo unhappy, as to offer any Thing in this Caſe leſs proper, or correct, than might otherwiſe be expected from me, I hope I ſhall obtain your Lordſhips greater Indulgence.

The Offences, which are charged to be committed by the Noble Earl impeach'd, are contained in many Articles, no leſs than twenty one in the Whole; but the Gentlemen of the Houſe of Commons have been pleas'd to wave ſeveral of them, and, I hope, when your Lordſhips have heard us, and our Evidence, you will be pleaſed to acquit him of all the reſt.

Theſe Articles have been conceived with the greateſt Caution, and open'd with the greateſt Art, heighten'd with every Circumſtance that may induce Reſentment, and urged againſt the Noble Earl impeach'd with a particular Zeal, well becoming the great Concern which thoſe Gentlemen always ſhew for what they apprehend the Publick Service, and the faithful vigorous Diſcharge of the great Truſt repoſed in them by the Houſe of Commons.

The impeach'd Earl is purſued back from his late Reſignation of the High Office of Lord Chancellor, through every Stage of Publick Life; and, with inquiſitive Eyes, they have alſo view'd and pry'd into even his moſt private Tranſactions, ſo as not even the leaſt Indiſcretion has paſſed unobſerved.

Some Actions, which in themſelves are truly innocent, and are declared to be ſo by the conſtant uniform Practice of all the Great and Honourable Perſons that have gone before him, are here repreſented as highly culpable.

Others, which we humbly apprehend, are not only innocent, but commendable and meritorious, even his perſonal Acts of Charity, are imputed to him as Crimes.

But in one Reſpect I muſt beg leave to congratulate the impeach'd Earl, and think it is his great Felicity, that in this ſo publick an Examination, ſo ſtrict and rigid a Scrutiny into his whole Conduct, at leaſt ever ſince he was firſt advanced to the Great Seal, there is not one Objection made, one Inſtance given of Corruption, Partiality, or Oppreſſion, in his own perſonal Adminiſtration of Juſtice; and therefore, I hope, I may well conclude (ſince it is admitted by the Proſecutors themſelves) that he has deny'd Juſtice to no Man, he has delay'd Juſtice to no Man, he has ſold Juſtice to no Man.

The principal Objection that ſeems to be rely'd on by the Learned Managers, and the only one which I humbly apprehend can any Way affect the impeach'd Earl in the preſent Caſe, is, that poſſibly he may have been too eaſily lead into a good Opinion of ſome Perſons, who in the Eye of the World appeared

appeared to be Men of good Subſtance, and fair Reputation, Perſons that were recommended to him by others of undoubted Honour and Credit; that he has admitted theſe Perſons into Offices of great Truſt and Profit under him; and they have at length been found not to have deſerved the good Opinion, which he at firſt had been perſuaded to entertain of them.

Some of theſe Officers have been negligent, others unfaithful in the Diſcharge of their Duty; and in their Crimes 'tis now attempted to involve the impeach'd Earl as their Principal and Patron.

And, in regard the principal Complaints againſt the Noble Earl are founded upon the Diſpoſition of the Offices of Maſters in Chancery, therefore it has been thought neceſſary (in the Preamble of the Articles exhibited) to repreſent the Maſters in Chancery as Officers of very great Truſt, ſworn to ſerve the King and his People, and aſſociated to the Lord Chancellor by particular Commiſſions, for his Aſſiſtance in the due Adminiſtration and Execution of Juſtice.

My Lords, what Uſe Maſters in Chancery might formerly be of, and what Aſſiſtance to the Lord Chancellor they might antiently give, I know not, but at preſent they ſeem to be of very little Advantage to him in the Determination of Cauſes in Court.

They ſit indeed in Court, at proper Diſtances, on each ſide the Chancellor, and ſedulouſly attend his Motions, but never pretend to adviſe or interpoſe in Judgment.

They have likewiſe the Honour to be named in Commiſſions of Aſſociation to the Lord Chancellor; but the whole Body are not always named in ſuch Commiſſions, but only ſuch particular Perſons as his Majeſty is pleaſed to think fit: And this appears from one of the oldeſt Commiſſions that has been produced and read before your Lordſhips, I think it was the Commiſſion granted to *Robert Southwell* and others the 9th of *October*, 4 *Edw.* VI. wherein there were not more than four or five of the Maſters named; tho' I believe in the later Commiſſions their Names are uſually all inſerted. But what Power or Authority is given them by this Commiſſion? None at all, that they can execute of themſelves in the Abſence of the Maſter of the Rolls, or ſome of the learned Judges named therein; for the Judges and the Maſter of the Rolls are only included in the *Quorum*.

But, my Lords, Commiſſions of this Kind are not uncommon: Clerks of Aſſize, and other Officers, are named in the Commiſſions of Aſſociation to the Judges of Aſſize, in their reſpective Circuits, yet act as Miniſterial Officers only under them.

And I humbly apprehend, that in this Caſe it has been ſufficiently proved before your Lordſhips, by a Gentleman (that was once a very good Maſter in Chancery) that they now pretend to exerciſe no judicial Authority whatſoever.

They examine and ſtate ſuch particular Matters and Facts, as the Court is pleaſed to refer to them, for its better Information, and which the Court it ſelf has not Time to look into; they ſettle Accounts depending between the Suitors of the Court; they look into, and take Counſels Opinions upon Titles of Eſtates bought and ſold by Order of the Court; and they tax Coſts.

This ſeems to be their principal Concern; and yet in this they are not abſolute Judges, they determine nothing finally; for when they have made ſuch Enquiry as the Court directs them, they only certify their Opinions of the ſeveral Matters referred to them by way of Report, which Report is not concluſive to the Parties; for either of the Parties that thinks himſelf aggrieved by ſuch Report, may take Exception to it; and the Court, on hearing ſuch Exception, will controul the Maſter's Report, and determine as they think Juſt. And in caſe the Parties themſelves do not controvert the Matter reported, but totally acquieſce and ſubmit to it, yet is not the Maſter's Report a final Judgment, nor will bind the Parties thereto, till it be afterwards confirmed by the Order of the Court: It receives its Authority and Sanction from the Order of the Court, and has none without it.

But it was certainly very rightly judged by the learned Managers, and they have thought it very material for them, to advance the Reputation of theſe Offices, in order to make it more penal to have any Preſent or Compliment made to the Great Seal, upon the Admiſſion or Reſignation of the Maſters.

Another Obſervation was made by one of the learned Gentlemen of the Houſe of Commons, in relation to their general Charge, which is this; They charge, that the Earl, in or about *May*, One thouſand ſeven hundred and eighteen, by the great Grace and Favour of his Majeſty, was conſtituted Lord Chancellor, and did thereupon take the uſual Oath for the due Execution of that Office, and ſuch other Oaths as have been accuſtomed; in order, as I conceive, to inſinuate, that he had acted contrary to, or in Violation of ſome particular Oath, which had been adminiſter'd to him.

The Earl in his Anſwer admits, That on the fourteenth of *May*, One thouſand ſeven hundred and eighteen, he took the Oath of Office as Chancellor, which is ſet forth in his Anſwer; that at the ſame Time he took the Oaths of Supremacy and Allegiance, but no Oath of Office, except that above ſet forth.

To this Part of the ſaid Earl's Anſwer, the learned Managers are pleaſed to object, That the Oath preſcribed by the Statute of *Richard* the Second, had been frequently adminiſter'd to the Noble Earl, but that he had forgotten that Oath in his Anſwer, as well as in his Conduct and Practice.

And to prove this Fact, Mr. *Eyre* (one of the Officers of the Exchequer) was produced, on whoſe Evidence it did appear (as we apprehend the Fact truly is) that when the Honourable Privy Council are annually aſſembled in the Court of *Exchequer*, to prepare a Liſt of Names of proper Perſons to be preſented to his Majeſty, for his Choice of Sheriffs for the Year enſuing, and the Judges then alſo attending, one of the Officers of the Court reads over the very Words of the Statute of *Richard* the Second in *French*, and then the Bible is preſented to the Noble Lords, and others of the Privy Council, and alſo to the Judges preſent, which they kiſs, and then proceed to the Nomination of the Sheriffs for the ſeveral Counties in *England*.

My Lords, I muſt obſerve that upon this Occaſion no formal Oath is adminiſter'd, in purſuance of this Act of Parliament; nor any Entry or Record made of any Oath taken by all or any of the Perſons preſent.

The words of the Act of Parliament are, That the Chancellor, Treaſurer, and other great Officers therein named, the Juſtices of the one Bench, and of the other, the Barons of the Exchequer, and others, who ſhall be called to ordain or make Juſtices of Peace, Sheriffs, or other Officers therein named, or any other Officers or Miniſters of the King, ſhall be firmly ſworn that they ſhall not ordain, name, or make ſuch Officers for an Gift or Brokage.

This Act of Parliament doth direct an Oath to be adminiſter'd, tho' the preciſe Form of the Oath is not preſcribed.

But the Act of Parliament it ſelf can't be called that Oath which it ſelf directs; nor the reading or hearing that Act of Parliament read, be called the adminiſtring or taking that Oath: The Oath muſt be ſomething diſtinct from the Act of Parliament which directs it.

Therefore, my Lords, I humbly ſubmit it to your Lordſhips, that the reading of this Act of Parliament, upon this particular Occaſion, is rather uſed as a particular Exhortation or Admonition to that Auguſt Aſſembly, how they ought to demean themſelves in that ſingle Inſtance of their Duty (the Choice of Sheriffs) than to have an univerſal Obligation in reſpect to the Nomination of all other Officers in general.

If this was intended to be adminiſter'd as an Oath of Office, then being once taken by any Perſon in Office, it need not be taken again, during the ſame Perſon's Continuance in the ſame Office; but this Act of Parliament is annually read over upon the Return of every Election of Sheriffs, and ſeems to be particularly applicable to that Duty.

Sheriffs are indeed very great Officers, have whole Counties under their Influence and Juriſdiction; and therefore very ſingular Care ought to be taken in their Nomination.

The Chief Juſtices and Judges preſent upon that Occaſion, uſe the ſame Ceremony of *Kiſſing the Book*; and if this ſhould be interpreted an Oath, it would be of great Extent, and the Conſequence of that muſt be, that the beſt Offices ſhould have no Candidates for them; for the latter Part of the Oath, directed by this Act, is, That none, who purſueth by him, or by other, privily or openly, to be in any manner of Office, ſhall be put in the ſame Office, or any other.

So, if this be conſider'd as an Oath, every one of the great Perſons that have taken it, muſt be indiſpenſedly obliged not to give any Office to any Perſon that hath even ask'd, or made Application by himſelf, or any one in his Behalf, for that or any other Office whatſoever.

If this Conſtruction, which is now contended for, was admitted, a great many Perſons might be thought guilty of Perjury, who themſelves never apprehended it; and how far the Guilt of this Perjury may be extended, is not eaſy to determine.

But, my Lords, it is not the Noble Earl's Intention to incur the Cenſure of quibbling himſelf out of the Obligation of an Oath, or the Letter of an Act of Parliament; we beg leave to inſiſt, that in whatever Light this Tranſaction is taken, it can't be conſtru'd to be the taking an Oath within the Intention of the Charge contain'd in the preſent Articles, which is, That he took the Oath of Office, and ſuch other Oaths as have been of Right accuſtom'd.

This Charge, my Lords, muſt be confined to ſome reaſonable Time, wherein theſe other Oaths charged muſt be ſuppoſed to be taken: I apprehend it can relate to ſuch Oaths only, as the Noble Earl took at the ſame Time, when the general Oath of Office was adminiſter'd to him.

And the Earl, by his Anſwer, certainly underſtood it in this Senſe; otherwiſe, to make a compleat Anſwer to ſo general a Charge, he muſt have been under a Neceſſity, to have ſet forth all the Oaths which he hath taken in his whole Life-time, at leaſt, ſince his firſt Oath as Chancellor.

He took the Oath of Office as Chancellor the fourteenth of *May*, One thouſand ſeven hundred and eighteen; this Proceeding in the *Exchequer* is proved to be in *November* following: Who would underſtand that this Charge intended to couple two Tranſactions together, that in themſelves were ſo diſtinct and remote!

Having thus endeavour'd to remove theſe Objections, which ſeem to be no Part of the Charge, but only uſed as introductory to it, I ſhall now proceed to the Charge itſelf.

The firſt and general Charge is, That the ſaid Earl, not regarding the Obligation of his Oath, or the Duty of his Office, but entertaining wicked and corrupt Deſigns and Views to procure himſelf exorbitant Profit, by divers unjuſt and oppreſſive Practices, whilſt he continued in the Office of Chancellor, did illegally, corruptly, and extorſively, take and receive to his own private Uſe great Sums of Money, in Breach of his Oath, and Violation of his Duty as Lord Chancellor.

This is inſiſted on by the Gentleman, who firſt ſpoke, as an Offence of the deepeſt Dye, which ſtrikes at the very Root and Foundation of all Civil Government; and to render it more odious, it is introduced as an Act of the higheſt Ingratitude to his Majeſty, as well as injurious and oppreſſive to his Subjects. To demonſtrate this, it is repreſented, that upon the ſaid Earl's being appointed Lord Chancellor, in *May*, One thouſand ſeven hundred and eighteen, his Majeſty was pleaſed, of his Grace and Bounty, to beſtow upon him the Sum of fourteen thouſand Pounds in Money, and to grant him ſeveral other yearly Penſions and Payments, which another Gentleman (in obſerving the Evidence given on this Head) was pleaſed to ſay, did, together with the uſual Salary, Fees, and Profits, belonging to the Office, amount unto near ten thouſand Pounds *per Annum*; and this was ſtrongly urged as enough to ſatiate the Appetite of the moſt Avaricious, and prevent any illegal and corrupt Extortions of other Sums from his Majeſty's Subjects.

To this, my Lords, we hope your Lordſhips will think the Noble Earl has put in a very plain and ſatisfactory Anſwer.

That he had for ſeveral Years before his Advancement to the Great Seal the Honour of ſerving his Majeſty in the Office of Chief Juſtice of the Court of *King's-Bench*; and as a Reward for his good and faithful Services in that high Office, his Majeſty, out of his Royal Grace and Favour, upon the tenth of *March*, One thouſand ſeven hundred and fifteen, was pleaſed to advance him to the Dignity of a Peer of this Realm; and for the better Support of that Honour, to grant him a Penſion of twelve hundred Pounds *per Annum*, and to declare his Royal Intentions of giving the ſaid Earl's eldeſt Son an Office of conſiderable Profit, when Opportunity ſhould offer.

That in *May*, One thouſand ſeven hundred and eighteen, his Majeſty was pleaſed to appoint him Lord Chancellor; on the fourteenth of the ſaid Month of

of *May*, he took the uſual Oath of Office, and at the ſame Time the Oath of Supremacy and Allegiance, and no other Oath of Office.

That during the Time he continued in the Office as Lord Chancellor, he enjoy'd the uſual Salary, Fees, and Perquiſites, which Mr. *Pincent* (who was called as a Witneſs to this Particular) proved to be about eleven or twelve hundred Pounds *per Annum*.

That his Majeſty alſo granted to him the Salary of four thouſand Pounds *per Annum*, during his Continuance in that Office; which was not particular in his Caſe, but conſtantly granted to, and enjoyed by all his Predeceſſors.

That to this, his Majeſty was further pleaſed to ſign a Warrant to him for fourteen thouſand Pounds, as mention'd in the Articles; whereof two thouſand Pounds was the uſual Allowance to other Lord Chancellors, or Keepers, towards the Expences in entring upon the Office; and the reſt was his Majeſty's Royal Munificence, and received as ſuch.

The Noble Earl likewiſe admits, that his Majeſty was alſo pleaſed to grant his only Son, then going to travel, an yearly Penſion of twelve hundred Pounds, determinable upon his Majeſty's granting him one of the Offices of Teller of the *Exchequer* for Life; which was accordingly granted, and he came into the Poſſeſſion of it, in One thouſand ſeven hundred and nineteen, whereby that Penſion determined; ſo that the yearly Payments to his Lordſhip were but ſix thouſand four hundred Pounds *per Annum*, beſides the Penſion of twelve hundred Pounds to his Son, which ſoon after determined, upon his coming into Poſſeſſion of his preſent Office.

This is all the Revenue which the Noble Earl received during his Continuance in this great Office: And, I humbly preſume, this can't be thought exceſſive, conſidering the great Fatigues, Difficulties, and Expences, that neceſſarily attend the Execution of this high Office: Perhaps other Offices might be found, that are leſs difficult in the Execution, and yet ſuperior in Profit.

But, my Lords, the Objection does not ſeem to turn that Way; but rather, that this Noble Lord, not contented with theſe ſeveral Inſtances of Royal Grace and Bounty, illegally, corruptly, and extorſively took and received other great Sums from other Perſons to his own Uſe.

This the Noble Earl expreſly denies, and ſays, That during his Continuance in the Office of Chancellor, or at any other Time, he never once had a Deſign or View, or even a Wiſh, to raiſe to himſelf any exorbitant Gain or Profit, much leſs to extort Money by any unjuſt or oppreſſive Methods whatſoever.

And indeed, my Lords, this is a Charge that gives the Noble Earl at once the greateſt Trouble and Surprize; he never ſuſpected a Crime of this Sort, ſo contrary to his Nature, and the whole Tenor of his Life, could ever be objected to him: And to ſhew, that this is without any Foundation of Truth, the preſent Circumſtances of his Family and Fortune (when laid before your Lordſhips) will abundantly demonſtrate and convince Mankind, that he is not that rich, that avaricious, and corrupt Man, as he is repreſented.

As he has received large Bounties from his Majeſty, he has been abundantly liberal to Perſons that were proper Objects of Charity; and his Purſe has been always open to ſuccour and relieve the Diſtreſſed.

This, my Lords, brings me on to the material and principal Part of the Charge, which is, That he did illegally, corruptly, and extorſively take and receive to his own private Uſe great Sums of Money, in Breach of his Oath, and Violation of his Duty as Lord Chancellor.

The Inſtances given of this corrupt taking of Money refer to the ſeveral Sums mentioned in the five Articles, which the Gentlemen of the Houſe of Commons were pleaſed firſt to enter upon, and which relate to the ſeveral Sums of Money received from the four Maſters in Chancery, mentioned in the fifth, ſixth, ſeventh, and eighth Articles, and the Clerk of the Cuſtodies mentioned in the ninth.

If the Charge contained in theſe ſeveral Articles be a Crime, it muſt appear to be ſo in its own Nature, to be an Offence at Common Law, or made ſuch by ſome Act of Parliament. I ſubmit it to your Lordſhips, that taking a Preſent, or taking Money from Perſons upon their Recommendations or Nominations into Offices, though they do concern the Adminiſtration or Execution of Juſtice, is not a Crime in its own Nature; it is no Act of Immorality; it is no Act of Injuſtice to any Man; for no Perſon has any particular Right to theſe Offices, but his Advancement muſt be owing to the Favour or Friendſhip of him, who has the Right and Power of Nomination: And if the Office it ſelf be valuable, ſo is the Right of Nomination to it, and may be eſteemed as Part of the Eſtate of that Perſon to whom it belongs: And if we conſider it in this Light, I think it can't be denied but that every Man has a natural Right to diſpoſe of his own Eſtate or Intereſt, his own Friendſhip or Favour, upon what Conſideration he pleaſes: It is his own, and therefore he has a Right to make any juſt and legal Advantage of it.

From hence, my Lords, I would beg leave to infer, that the taking a Gratuity or Sum of Money from any Perſon, upon his Nomination to one of theſe Offices, is not criminal in it ſelf, if ſimply conſidered, and diſtinct from the Good or Evil Conſequences that poſſibly may attend it.

And, in the next Place, I humbly ſubmit it to your Lordſhips, that it is not a neceſſary Conſequence, that every one that buys an Office, muſt and will behave himſelf either unfaithfully or corruptly in it. Inſtances may be given, and thoſe very antient ones, of Offices of Juſtice, Offices of the higheſt Character in the Adminiſtration of Juſtice, that have been purchaſed, and purchaſed from the Crown.

In Mr. *Madox*'s Hiſtory of the Exchequer, *Page* 43. we find that *Richard Fitz-Allured*, in the Time of King *Stephen*, fined fifteen Marks of Silver, that he might ſit with *Ralph Baſſett* to hold the King's Pleas; and in Page 743. of this Book it appears, that *Ralph Baſſett* was the King's Juſticier. Here we ſee one of the Juſtices of the *King's Bench* purchaſing his Office for fifteen Marks in Silver.

And

And in the ſame Page of the ſaid Book it appears, that in the ſeventh Year of King *John*, *Walter de Grey* gave the King five thouſand Marks *pro habenda Cancellaria Domini Regis tota vita ſua, & pro habenda indè Charta Domini Regis.*

Theſe, my Lords, are great Inſtances what the antient Uſage was, in purchaſing even the higheſt Offices of Juſtice.

Inferior Offices were doubtleſs diſpoſed of in the ſame manner; and if this had been thought Criminal, we ſhould have had ſome Inſtances in our Law Books, wherein they would have appeared to have been adjudged ſo.

I beg your Lordſhips leave to conſider in the next Place, and that very briefly, whether this can be taken to be criminal within the Words of the Statute of *Edward* VI. which has been taken Notice of by ſome of the learned Managers.

By the 5th and 6th of *Edw.* VI. *c.* 16. it is Enacted, *That if any Perſon or Perſons ſhall at any Time thereafter bargain and ſell any Office or Offices, or take any Money, Fee, or Reward, or any other Profit, directly or indirectly, for any Office or Offices, which ſhall in any wiſe touch or concern the Adminiſtration of Publick Juſtice; All and every ſuch Perſon and Perſons that ſhall ſo bargain and ſell, or take any Money, Fee, or Reward, for ſuch Office or Offices, ſhall not only loſe his Right, Intereſt and Eſtate in ſuch Office or Offices, but alſo every Perſon and Perſons that ſhall give or pay any Sum of Money, Reward, or Fee, ſhall be adjudged a diſabled Perſon in the Law, to have, occupy, and enjoy the ſaid Office or Offices.*

This is the Purport of this Act of Parliament, ſo far as it relates to the Offence charged in theſe Articles; and I apprehend it cannot be extended to the preſent Caſe.

Here are no prohibitory Words, that Perſons ſhall not bargain and ſell Offices, nor any Words declaratory that they could not do ſo before by Common Law.

And all Penal Laws are to be conſtrued favourably for the Benefit of the Subject, and not extended beyond the Letter.

But on the contrary, by the many Proviſoes after contained in this Act of Parliament, it is plain that all Offices, before the making of this Act, might be bought and ſold without Offence; and many Offices are authorized and intended by the expreſs Proviſoes of this Act, to continue to be bought and ſold for the future.

For by the firſt Proviſo in this Act, it is declared not to extend to any Office of Inheritance, which is an expreſs Declaration that Offices of Inheritance were to be bought and ſold even after the Act ſhould take place.

The ſecond Proviſo I apprehend is ſtronger to our Purpoſe; for by that it is declared, That this Act ſhall not extend to any Contract made or agreed before the firſt of *March* then next, but all ſuch Bargains and Contracts to be good, as if the Act had never been made.

And, my Lords, there is yet a further Proviſo, That this Act, or any Thing therein contained, ſhall not extend, or be prejudicial, or hurtful to any of the Chief Juſtices of the King's Courts, commonly called the King's Bench and Common Pleas, or to any of the Juſtices of Aſſize, as now be, or hereafter ſhall be, but that they and every of them may do in every behalf, touching and concerning any Office or Offices to be given or granted by them, as they, or any of them, might have done before the making of this Act, any Thing therein contained to the contrary thereof notwithſtanding.

What is that which theſe great Officers of Juſtice might have done before the making this Act? They might have given, granted, bargained, or ſold, the reſpective Offices under them, in ſuch manner as they thought fit; and by this Proviſo they may continue to do ſo ſtill.

What Alteration then is made in the Law by this Act of Parliament? Here is no new Offence created, but a particular Penalty given, to be inflicted on all that ſhall buy or ſell Offices, not contained in any of the ſubſequent Proviſoes; that is, the Contract made between the Buyer and Seller is declared void: The Party ſelling loſes his Eſtate and Intereſt in the Office; and the Party buying is render'd incapable to hold and enjoy it.

In *Caſtle*'s Caſe, *Cro. Jac.* 644. it was adjudged, That when a Statute appoints a Penalty for the doing a Thing, which was no Offence before, and appoints how it ſhall be recovered, it ſhall be puniſhed by that means, and no other.

Therefore, my Lords, in the preſent Caſe, ſuppoſing that the Preſents proved to be ſometimes made to the impeached Earl, upon the Nomination of Maſters in Chancery, can be interpreted a ſelling of an Office, or taking Money for an Office, within the Intention of this Act of Parliament, it can be liable to no other Puniſhment than what the Act it ſelf directs; and this the Noble Earl has already ſuffered by his Loſs of the Great Seal. The Statute inflicts a Penalty upon the Seller of an Office, only of forfeiting the Nomination to the Office for the future; and no other Penalty or Puniſhment ought to be inflicted by virtue of this Act of Parliament; and conſequently the Offence as now charged againſt the Noble Earl, and the Facts as proved before your Lordſhips, cannot ſubject him to any Puniſhment or Judgment, that can be prayed in this Proſecution, upon the preſent Articles of Impeachment.

But, my Lords, there is another Anſwer, which the Noble Earl has been pleaſed to make to this Part of the Charge againſt him, and which I hope your Lordſhips will have great regard to.

It is the Example of the many great and learned Perſons, who have executed this high Office before him.

The Precedent is too antient, for us to diſcover when it was firſt made; and I humbly ſubmit it to your Lordſhips, that the immemorial conſtant Uſage and Practice of it in all Ages ſince, will ſufficiently eſtabliſh the Reaſonableneſs and Juſtice of the Precedent.

The ſame Objection, which is now made againſt the Noble Earl impeached, in this particular Inſtance, might undoubtedly have been inſiſted upon againſt every one of his Predeceſſors.

And I doubt not but we ſhall be able to prove, that theſe Officers have made Preſents to the Great Seal, as frequently and conſtantly as the ſeveral Vacancies have been ſupplied.

This Noble Lord has only followed the Example of his Predeceſſors; he has trodden in their Steps: And I muſt beg Leave to ſay, There muſt be ſomething peculiar in his Caſe, if the ſame Paths, which lead them to Honour and Immortality, ſhall betray him to Infamy and Diſgrace.

This Objection, my Lords, ſome of the Learned Managers of the Houſe of Commons were well aware of; and therefore they have endeavour'd to diſtinguiſh the preſent from the preceding Caſes.

They admit it to be true, that ſmall Sums have been formerly given to, and accepted by former Chancellors, upon Admiſſions into theſe Offices, by way of Compliment or Preſent, and this without a Crime: But then they urge, that the Sums now complain'd of are exorbitant; they are bargained, haggled for, and given unwillingly by the Purchaſer; and that there is a great difference between a Preſent given, and a Price bargained for and paid.

My Lords, I can't deny but that this Diſtinction is juſt: A Preſent implies a voluntary Gift of ſomething leſs than the Value of the Thing given, or promiſed, for which that Preſent is to be made; a Price, the full Value of the Thing contracted for.

And I think the preſent Earl's Caſe is exactly within this Diſtinction, and juſtifies the Earl's Anſwer in this reſpect.

The Preſent which Mr. *Kinaſton* made to the Earl, upon his Admiſſion, was One thouſand five hundred and ſeventy five Pounds. The Price he paid Mr. *Rogers* for the Purchaſe of his Office, was no leſs than Six thouſand Pounds.

The Preſent which Mr. *Thomas Bennet* made to the ſaid Earl, upon his Admiſſion, was One thouſand five hundred and ſeventy five Pounds. The Price he paid Mr. *Hiccocks* for the Purchaſe of his Office, was Seven thouſand five hundred Pounds.

Mr. *Elde*, upon his Admiſſion into the Office, upon the Death of Mr. *Fellowes* (the former Maſter) made a Preſent to the late Chancellor, of Five thouſand two hundred Pounds. But when his Lordſhip conſider'd the Greatneſs of the Sum, he returned him all but Eighteen hundred Pounds: When at the ſame time Mr. *Lucas* offered Six thouſand Pounds for the ſame Office.

Mr. *Thurſton* has alſo proved, that he left Bank-Notes to the amount of Five thouſand two hundred and fifty Pounds, ſealed up in a Letter at the Earl's Houſe, before his Admiſſion, upon Mr. *Borret*'s Death. But when the Lady, to whom the Letter was directed, diſcovered how great the Sum was, ſhe, without any Application made to her for that Purpoſe, return'd all but Two thouſand Pounds.

And this, my Lords, was done before the Seal before *Michaelmas*-Term laſt, before the Maſters were ordered by the Privy-Council to give in their Accounts; and when the preſent Proſecution was not in any ſort apprehended: And it is likewiſe proved, That Mr. *Lucas*, upon this Occaſion, renewed his Offer of Six thouſand Pounds for the Office; and Mr. *Thurſton* was admitted for a leſs Sum of Money.

Theſe, my Lords, we humbly hope and inſiſt are not Inſtances of a corrupt Mind, an avaricious, rapacious Temper, ſuch as ſome of the Gentlemen Managers have been pleas'd to repreſent them. On the contrary, we humbly hope, that upon the Evidence already given, it plainly appears, that theſe Payments were not Sums of Money extorted and unwillingly paid by the Gentlemen, who were admitted into the ſeveral Offices that have been mentioned, but Preſents voluntarily made, and preſs'd upon the Earl Impeached, with ſuch Application and Earneſtneſs that ſhews, that at the time they were offered, the Perſons offering, thought they were not equal to the Value of the Favour they expected. And their Importunity was ſo great, that Mr. *Thomas Bennet* one of the preſent Maſters, that has been ſo often Examined, would endure no Delay, but impatiently preſs'd to be Sworn into his Office, at a time when the late Chancellor was ſick, and by his Phyſician thought to be dying. This may rather be ſaid to be extorting a Favour from the Impeached Earl, than Money from Mr. *Bennet*, ev'n upon his own Evidence.

My Lords, We do humbly inſiſt, That as the Noble Earl within your Bar was not conſcious of any Crime in accepting theſe Preſents, ſo he is juſtified in ſo doing, by the Example of many ſucceſſions of great and learned Men, who have done the ſame in the like Caſe. And ſhould this now be adjudged Criminal, what Numbers of very good and juſt Men muſt be involved in the Imputation of this Guilt? It muſt neceſſarily ſpread an univerſal Cloud of Infamy and Reproach over the Aſhes of many juſt and upright Sages of the Law, whoſe Memories have hitherto been preſerved as venerable and ſacred; Men who deſpiſed Riches, and abhorred the remoteſt appearance of Bribery, and never were, nor were ſuſpected to be Corrupt: yet theſe Men thought it a juſt Duty, owing to themſelves and Succeſſors, to adhere to the known and juſt Rights, the ancient eſtabliſhed Fees and Perquiſites of their Offices; and believ'd it as juſtly due to them, as the Salaries which were annexed to their ſaid Offices.

My Lords, We ſhall beg Leave to ſhew that this has been the ancient Uſage and conſtant Practice of all Ages; and that the ſeveral Great Perſons, who ſucceſſively have preſided in the greateſt Courts of Law and Equity, from the earlieſt Times to the preſent, have diſpoſed of the ſeveral Offices in their Gift, as they became vacant, for Money.

Frequent Inſtances of this kind will be produced before your Lordſhips, in our Evidence.

My Lords, I would not be underſtood to mention this, ſo as to inſiſt that the Actions or Examples of the greateſt Perſons will alter the Nature of Good and Evil, or give a Sanction to any Action that in it ſelf is really Criminal; but only as an Argument (and I apprehend it a very ſtrong one) to prove, that it was the concurrent Opinion of all thoſe Great Perſons that have taken Preſents, upon their Diſpoſition of Offices, that it was not Criminal to do ſo.

The Opinion and Judgment of ſo many Learned Perſons muſt have very great Weight in a Caſe of this Nature: And if in ſtrictneſs it can't be ſaid to Juſtify the Action, it will certainly very much Extenuate the Guilt.

In the next place, the Gentlemen are pleaſed to proceed to ſhew, That Maſters in Chancery, being, as before repreſented, very great Officers in that Court; the Noble Earl within the Bar, for his own corrupt Gain, has admitted Perſons into that Office, that were not duly qualified for it, and forced them to give great Prices, and bartered and haggled for ſuch Prices.

This, my Lords, is urged as the greateſt Inconvenience, That Men who have no Subſtance of their own, ſhould be truſted with ſuch large Sums of other Perſons Money.

It is inſiſted, That Honeſty, Probity, and good Subſtance, are abſolutely neceſſary for the Suitors Security; yet Inferior Perſons have been put in by his Lordſhip, who had little or no Subſtance of their own: That they paid great Sums for their Places, yet paid it out of the Suitors Money; and that this was known, connived at, and encouraged by the Noble Lord that then preſided in the Court of Chancery. This therefore could only be with a view to enhance the Price of thoſe Places: For what would not People hazard, who had Nothing of their own to loſe? If any Profit could be made, it was their own; if any Loſs, the Suitors; for no Security was given to anſwer the Effects in their Hands.

My Lords, It muſt be confeſs'd, that this way of Arguing has a very popular Appearance, and finds an eaſy Acceſs to every Ear.

The Court of *Chancery* muſt be admitted to be the greateſt Court of Juſtice in the Kingdom: And it muſt be alſo admitted, That the Buſineſs of that Court has of late Years increaſed, in Proportion, more than any other Court; and conſequently, much greater Sums of Money are now depoſited in the Hands of the Maſters of that Court, than formerly.

This may poſſibly make it to be wiſhed, that ſome better Method might be found out for the Suitors Security, than has been formerly uſed.

But in what Manner this Reformation is to be made, is beyond the Power, or at leaſt the Prudence of any one Judge or Chancellor to determine; the ancient Practice of every Court is the Law of that Court; and it would be a dangerous Experiment for any one preſiding Judge to vary it: If any ill Conſequence to the Suitors attended ſuch an Alteration, he that made the Alteration would certainly be anſwerable for the Conſequences of it; for every Suitor will then ſay, Why was the ancient Practice vary'd? he that made the Alteration, ſurely did it for his own Advantage; and then every Argument that in the preſent Caſe is only colourably made uſe of, in that would be obvious and natural, and be apply'd with double Force.

He that acts without a Precedent, acts upon the Peril of his own Judgment: But he that acts againſt Precedents, againſt ancient, concurrent, uniform Precedents and Practices, is without Excuſe, and juſtly to be ſuſpected of ſome particular View, in the Language of the preſent *Articles*.

The Earl of *Macclesfield*, when he was firſt intruſted with the Great-Seal, found the Suitors Money in the Cuſtody and Care of the Perſons who were then Maſters of the Court, and without any Security given or demanded for it.

He conſider'd, that his Predeceſſors were a Succeſſion of Great and Honourable Perſons, of equal if not greater Sagacity and Learning, Probity and Experience, than any that ever had ſate in any Court; they found the Maſters in Poſſeſſion of the Suitors Money upon the ſame Eſtabliſhment, and they left them ſo.

Was it proper or prudent for him to oppoſe his ſingle Opinion to the united Judgment of ſo many wiſe and great Men that had gone before him? Surely, no. Inconveniencies had been ſeen before, and Deficiencies had happened, and thoſe Deficiencies had been ſupply'd by a voluntary Contribution of the other Maſters then in Being. Why was not Security then demanded? and why not all the other Maſters then called upon to bring in their Accounts, to prevent the like Deficiency for the future? If that Method had been thought either prudent or practicable, no doubt it would have been then taken: And this being then not done, or ever before or after attempted to be done, is a good Argument, that it was not expedient, or, it may be, poſſible to be done, at leaſt upon the ſingle Authority of one Lord Chancellor. And that therefore is a good Excuſe for the Omiſſion or Neglect in that Particular, in the preſent Caſe.

But, my Lords, It is now objected, That as the Sums of Money in the Maſters Hands are greater than ever, and it may not be proper to alter the ancient Method of the Maſters receiving and keeping it for the Suitors Benefit; yet greater Care ought to be taken of the Perſons to be admitted Maſters, upon Vacancies and Reſignations. And therefore another part of the Charge againſt the Honourable Earl Impeached, is, That he appointed Perſons to be Maſters of the Court, that were not proper or ſufficient either in Subſtance, Knowledge, or Probity.

Theſe are ſaid to be all eſſential Requiſites in the Character of every good Maſter; but groſsly neglected in the preſent Caſe: And a Reaſon is given, or (if I may preſume to ſay it) rather invented, in the preſent Caſe, that it was the Advantage of the Earl Impeached, to put in ſuch Unqualified Perſons; becauſe ſuch Perſons would be drawn in, to give larger Prices for their Places, and conſequently it redounded to the Earl's Advantage.

My Lords, I muſt beg Leave to obſerve, that in the Evidence that has been given, there has not been any one Inſtance proved (or at leaſt, that I can recollect) that any of theſe Maſters were really Inſufficient in any of the Particulars objected to, at the time of their reſpective Admiſſions into their ſeveral Offices; or at leaſt that the Noble Earl Impeached, then knew that they were Inſufficient, or had any reaſon to ſuſpect it: They were all Gentlemen of good Families, well Educated; each of them a Barriſter at Law (which, I ſubmit to your Lordſhips, is not the leaſt expenſive Education) and had all viſible Fortunes, and appeared as Perſons in very plentiful Circumſtances.

Ev'n Mr. *Conway* and Mr. *Thomas Bennet* (who are the Perſons intimated to be the leaſt qualified in Point of Fortune and Subſtance) had at that time very good Eſtates in their Poſſeſſions; Mr. *Bennet* had then alſo a very valuable Office, Clerk of the Cuſtodies; had married a Lady of conſiderable Fortune, kept a Coach and decent Equipage in Town; was the Son of Sir *John Bennet*, tho a younger Son; and the whole Family then ſeemed to be in a very proſperous Condition. Mr. *Thomas Bennet* has proved to your Lordſhips, that he was worth Twenty thouſand Pounds, in the Year 1720. And it does not appear, that the late Lord Chancellor was ever inform'd of any Incumbrances upon his Eſtate (tho' now, he ſays, there are great ones) or that his Circumſtances were leſs at the time of his Admiſſion, than in the Year 1720. Surely then the late Lord Chancellor had at that time no reaſon to ſuſpect his being unqualified in Point of Subſtance.

Mr. *Conway*

Mr. *Conway* had alſo then a very good viſible Eſtate in Land, an Eſtate of Four or Five hundred Pounds a Year; had been Receiver-General of ſeveral Counties in *Wales*, had diſcharged his Office punctually, and produc'd his *Quietus* to the Lord Chancellor, before Admiſſion.

Mr. *Kinaſton* had, at the time of his Admiſſion, an Eſtate of Four hundred Pounds a Year in Land, Timber of very conſiderable Value, and a Perſonal Eſtate of Two or Three thouſand Pounds; and moreover, was a Gentleman of a very good Family and unblemiſhed in his Character.

Mr. *Thurſton*, I think, the Gentlemen of the Houſe of Commons don't object to in any reſpect. None of their Reputations, in reſpect of their Probity, have been called in queſtion, 'till their late Misfortunes: And as to their other Perſonal Endowments, their good Senſe and Judgment, I need only refer to your Lordſhips own Obſervations, upon their ſeveral Examinations in the preſent Tryal.

But, my Lords, great Streſs ſeems to be laid, upon the Maſters paying for their Offices, out of the Suitors Money; or replacing the Money ſo paid, out of the Suitors Money.

Suppoſe that was the Practice amongſt the Maſters; does it appear to your Lordſhips, that the Impeached Earl had any Notice, or the leaſt Information given him of this Practice? Or if he had known it, how could he poſſibly have prevented it? Certainly, no other way, than by ordering all the Money immediately out of their Hands. And then another Difficulty would have occurred, how that Money ſhould have been diſpoſed of. Publick Societies would not ſubmit to be under the immediate Direction of the Court of Chancery; and no private Perſon could be truſted with ſo great a Sum, or give Security for it.

The Maſters of the Court are in nature of Caſhiers; they ſubſiſt upon Truſt and Credit; and no Security can be expected to anſwer the Quantity of Caſh in their Hands, more than in the Caſe of a common Banker. People will truſt Men in Credit with the Cuſtody of a Thouſand Pounds; when if they propoſed to borrow an Hundred Pounds on Security, would ſcruple to let them have it. But the Objection is carry'd yet farther: It is ſaid, If Security could not be expected, why were not their Books inſpected, upon one's transferring to another, and Schedules taken of their Effects?

To this it muſt be anſwered, That the Lord Chancellor has not Leiſure to attend this Duty Perſonally. And what other Perſon can be appointed more fit to be truſted (as an Inſpector of the going-out Maſters Accounts) than his Succeſſor, who is to ſtand charged with all the Money and Securities, and the whole Effects transferred?

Can any Obligation incline a Man more ſtrongly to Care and Exactneſs in Buſineſs, than private Intereſt? And his own private Intereſt will oblige him not to make himſelf accountable for more than he actually receives, and has transferred to him. And when the ſucceeding Maſter has examined the Effects of his Predeceſſor, by proper Schedules approved of by himſelf, they are then transferred to him by a General Order of the Court, and he becomes accountable for what is ſo transferred.

This, my Lords, we humbly ſubmit, has been the ancient Uſage and Practice of the Court in theſe Caſes; and that the ſame Method was uſed by the preſent Earl Impeached, the ſame Care taken, as had been formerly in the like Caſes by any of his Predeceſſors.

But, my Lords, I would beg Leave to ſubmit it, That ſuppoſing it to be poſſible that greater Care might have been taken by the late Lord Chancellor, in inſpecting the Schedules and Transfer of the Effects of Maſters to their Succeſſors; Does it appear that the Suitors of the Court have been any way injured or prejudiced by that pretended Neglect? Or would the greateſt Care, the greateſt Exactneſs in this Particular, have given the Suitors any greater Advantage or Security? Certainly, not at all: For let the Effects of the preceding Maſter be never ſo carefully and juſtly Examined and Scheduled, and and after that transferred, and actually delivered to the ſucceeding Maſter; has not the new Maſter, to whom theſe Effects are thus carefully and juſtly delivered, the ſame Power over them, to manage and diſpoſe at his Pleaſure, as he would have had, in caſe ſuch Transfers had been made with leſs Caution and Exactneſs, as in the preſent Caſe?

If any corrupt Agreement had been made by any new Maſter, upon coming into his Office, and previous to this Transfer, to have repaid or replaced any Sum of Money, before borrowed by him, either for the Purchaſe of his Office, or any other Occaſion; Could not he have complied with this, and paid it out of the Suitors Money or Effects, the very next Moment after they were transferred to him? And would the previous Care and Caution in any degree obſtruct or prevent his ſo doing? I apprehend, not at all; for as ſoon as the Maſter is in Poſſeſſion of the whole Money and Effects, he may return any part that he pleaſes to his Predeceſſor, by virtue of any Agreement before made for that Purpoſe; which would be as much to the Prejudice of the Suitors, as if what was ſo returned to the Predeceſſor, after a Transfer made, had been retained in the firſt Inſtance by the Predeceſſor, and never actually delivered over to his Succeſſor.

Therefore, my Lords, this Security, as projected, is but Imaginary, and gives the Suitor no greater Advantage than he had before; and conſequently this ought to be no Ingredient of Complaint againſt the Impeached Earl.

But, in the next place, it is ſtrongly urged, That tho' the Noble Earl, during his High Offices, might not have Leiſure to attend little Occurrences, or regard ſmall Neglects; yet the Going-off of Mr. *Dormer* ſhould have awaken'd him; ſome Care ſhould, upon that Accident, have been taken. If what had paſſed before was only Supineneſs, this was a Wilful Neglect; and not enquiring into the State of his Affairs, and ſecuring his Perſon and Effects for the Suitors, was concurring in Defrauding the Suitors.

My Lords, This was indeed a remarkable Occurrence: The Going-off of Mr. *Dormer* was unforeſeen, and unſuſpected: His Perſon was withdrawn, and out of the Power of the Court; but all imaginable Care was taken to ſecure his Effects.

The two Senior Maſters immediately were directed to enquire into his Effects, ſecure his Chambers, and put a ſtop to all Transfers in his Office. What more poſſibly could be done in this Emergency, his Perſon being out of the Power of the Court?

A Propoſal is made on his Behalf, That if the then Chancellor would engage that his Liberty ſhould be ſecured to him, he would return, and

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diſcover and aſſiſt to get in his Effects. This is thought reaſonable, and for the Suitors Benefit, and accordingly complied with; and thereupon the unhappy Man returns, and not only makes the beſt Diſcovery of his Effects, but delivers all in his Power, for the Benefit of the Suitors. Could any thing be more Advantagious to the Suitors, or contribute more to their Intereſt than this?

The Impeached Earl had indeed promiſed his Perſon ſhould not be Impriſon'd; and it would have been the higheſt breach of Faith to have departed from it. Had not that Promiſe been made, Mr. *Dormer* had not Return'd, nor any Diſcovery been made by him; but by this Means they had the Benefit of the beſt Diſcovery that could be had, and the beſt Aſſiſtance the Noble Earl could give them. He never deny'd or diſcouraged any Application that was made by or for the Intereſt of the Suitors in that reſpect, nor endeavour'd to conceal the true State of his Effects, and the Condition of his Office. And as to the Expreſſions inſiſted on to delude the Suitors, by ſaying, as has been objected, That Mr. *Dormer* was only gone to take the Air, and would ſoon return; tho' theſe Expreſſions have been much inſiſted on, in the Arguments againſt the Impeached Earl, I do not remember that they have been mentioned in the Evidence.

And, my Lords, to ſhew that the Impeached Earl did all that was in his Power to render what Aſſiſtance he could give the Suitors; when a new Maſter was to be appointed, he left the Diſpoſition of the Office to the Direction of the other Maſters: And Mr. *Edwards* gave no leſs than Five thouſand Pounds for that Office of Mr. *Dormer*'s, which was wholly apply'd towards the making up his Deficiency. By this Enquiry, *Dormer*'s Real Eſtate was ſecured to the Suitors; and it was expected by the Earl himſelf, and by Mr. *Edwards* that ſucceeded Mr. *Dormer*, that the reſt of his Deficiency, which was then uncertain, would have been ſupplied by the other Maſters, provided they could be continued in their Offices upon the old Eſtabliſhment.

It may not be improper to obſerve further in this Caſe, That Mr. *Dormer*'s Deficiency does not appear to have happen'd through any Extravagance of his own, or by his Miſapplication of the Publick Money: He employ'd Mr. *Wilſon*, then a Perſon in good Credit, as his Banker, and entruſted him with his Caſh. *Wilſon* had Dealings with *Poulter* in the fatal Year 1720. *Wilſon* was reduced, and ſtopped Payment; his Debt to Mr. *Dormer* was then Twenty four thouſand and forty ſix Pounds; this, Mr. *Dormer* aſſigns to Mr. *Edwards* his Succeſſor in the Office, it was all that Mr. *Dormer* had, all therefore that he could reſtore, and more than could be got in: For Mr. *Edwards* applying for this Money, found Mr. *Wilſon* not able to pay the whole Debt, and thereupon a Propoſal is made of a Compoſition.

The Maſters conſidering this, thought proper to Petition the Lord Chancellor, That it might be referred to the Senior Maſter, Mr. *Hiccocks*, to Examine and Report, Whether it was for the Benefit of the Perſons Entitled, that a Compoſition ſhould be accepted.

The Maſter to whom this Queſtion was referred, Reports it Reaſonable; and an Order is made, upon a ſecond Petition preferred, That the Compoſition ſhould be accepted.

This, my Lords, we apprehend, was an engaging in this Affair with all the Zeal that could be deſired on the Earl's part; no Evidence of any Deſign or Endeavour to conceal the Deficiency: All or moſt of the Maſters conſulted upon this Compoſition, and conſented to it: And as for thoſe that were not Parties to it, they are not bound by it.

But it is objected, That this Tranſaction was Private and Clandeſtine between the Maſters and the then Chancellor; not carried on in the uſual Manner, nor any Notice given to the Suitors in Reality, tho' a Pretence of uncertain Notice mentioned at the Bottom of the Order.

My Lords, we hope this cannot affect the Noble Lord within the Bar; it is the Duty of the Chancellor to pronounce Orders in Court; but it is the Care and Duty of the Solicitors or Clerks in Court to ſee them Drawn up, Entred and Regiſtred, in proper Time and Form.

The Subſtance of the Order is pronounced by the Court: The Form is the Act of the Regiſter; and the Chancellor can't have Leiſure to attend the Entries of all his Officers.

Fourteen hundred Pounds was paid in upon this Compoſition; One thouſand Pounds has been brought in ſince out of *Poulter*'s Effects: So much has been ſecured at all Events by this Compoſition, and the Suitors have received the Benefit of it. Have the Gentlemen on the other Side ſhewn, that without this Compoſition any thing could have been ſecured to the Creditors in General, or that any other Creditor has obtained more advantagious Terms? It was ſaid indeed that other Creditors had received their full Demands: But I ſubmit to your Lordſhips, that no Proof has been made thereof, only an uncertain Hear-ſay of ſmall Sums lent, to give him new Credit after his firſt Abſconding. But when the Compoſition was made, a good Debt was ſubſiſting to *Wilſon* from *Poulter*, and Judgment obtained againſt him, and he committed to the *King's-Bench* Priſon in Execution. The Marſhal ſuffers him to Eſcape: Thereupon an Action is brought, and Judgment obtained againſt the Marſhal, for his Eſcape; and at length the Marſhal is run out of the Kingdom, to avoid making a proper Satisfaction.

What a Series of evil Accidents concur to increaſe this Misfortune, and prevent the juſt Deſign of the Earl to do the Suitors all the Juſtice in his Power! But to whom has he been Defective, if all prudential Steps have been taken? It is hard that he ſhould anſwer for the Conſequence, that he could not, it was not in his Power to prevent.

But, my Lords, in the 15th *Article*, it is objected to the Impeached Earl, That to carry on his unjuſt Purpoſes, in Concealing *Dormer*'s Deficiency, in *February* One thouſand ſeven hundred and twenty he ordered the Maſters to bring in their Accounts of their Caſh, Effects, and Securities; not with a real deſign to Examine the Accounts, and Secure their Effects, but to terrify them into a Contribution; and threatned that the Caſh ſhould be taken out of their Hands, if they did not comply; by which means he got nine of the ſaid Maſters to contribute Five hundred Pounds a-piece out of the Suitors Money, and then no farther Proceedings were had upon their Accounts.

My Lords, One would have thought that theſe Proceedings, which ſo plainly tended to the Good of the Suitors, could not by any Artifice have been interpreted to their Prejudice.

In

In *February* 1720, my late Lord Chancellor (finding Mr. *Dormer*'s Deficiency like to be greater than at firſt it was apprehended) was willing to look into the State of the Accounts of the other Maſters, to guard againſt the like Misfortune; and at the ſame time propoſes to them to advance Money to help to pay Mr. *Dormer*'s Deficiency. Five hundred Pounds a-piece is raiſed by nine of them, and applied accordingly; the laſt of theſe Five hundred Pounds paid in *Auguſt* 1721. And upon the 7th of *November* 1721 a ſecond Letter is written to haſten theſe Accounts, and every Argument uſed that could be thought likely to induce them to it: But the Labour proved too difficult, and the Purſuit was forced to be given over 'till a more convenient Time and Opportunity ſhould preſent. What was done in this Inſtance alſo, I beg Leave to ſay likewiſe, was following the Example of another Great Man, in the Method he took in the Caſe of Dr. *Eddisbury*, and that has ſome Circumſtances leſs favourable than the preſent: Dr. *Eddisbury* was always in Town, or at leaſt within the Reach or Power of the Court, and yet his Perſon was not ſecured for many Years after his firſt Failure.

Upon the 29th of *January*, 7 *Annæ*, there is an Order entred in his Caſe, (the only one we can find on the File) for Dr. *Eddisbury* to deliver up his Effects to the two Senior Maſters: It recites, That Dr. *Eddisbury* had ſeveral Sums and Securities for Money in his Hands, and that ſeveral Orders had been made for Money out of his Hands; which were not complied with; and that he declared himſelf not able to pay; and that his Accounts given in were not full: It is therefore Ordered, That in four Days time after Notice, he do Account to the ſeveral Maſters, and deliver in to the ſaid Maſters what he hath in Hand, and the Report to be taken in ten Days.

My Lords, By this Order it appears that Dr. *Eddisbury* had ſeveral Orders made upon him for Money to be paid, not in Average, for ſome Time, and thoſe Orders not complied with; and that he had not given full Examination, and had Prevaricated with the Court; yet the laſt Extremity, the Committing his Perſon, and ordering Payment in an Average, was not thought of, 'till it was certainly known and he had actually confeſſed that he had not Aſſets to pay the Whole.

In the preſent Caſe, Mr. *Dormer* was Examin'd; diſcover'd his Eſtate, aſſigned the Whole in Truſt for the Suitors, but died before the Enquiry could be perfected.

In Dr. *Eddisbury*'s Caſe the other Maſters contributed at firſt to ſupply his Deficiency, as they ſince did in the Caſe of Mr. *Dormer*: And this without doubt was ſo done, in hopes that his Effects, when fully diſcovered, would in time prove ſufficient to anſwer all, or much the greateſt part of the Suitors Demands: And thus far both Caſes are parallel, and Orders made for Payments to the reſpective Suitors in general, as they applied for them. And no Average was directed in the Caſe of Dr. *Eddisbury*, 'till it appeared ev'n by his own Confeſſion, that his Aſſets were not ſufficient to make good the Suitors whole Demand: And when the *quantum* of the Deficiency was known, Payments were directed by the Court to be made in Average. So, in all probability, in due time the like Order would have been made in the preſent Caſe: But that could not poſſibly be done 'till the Value of Mr. *Dormer*'s Effects could be known and aſcertained, in order to fix the Proportion to be paid, in Average. And this, my Lords, to this time, through the many Accidents before mentioned, it has not been poſſible to effect: And therefore, the not directing Payments in an Average, can't be reaſonably objected to the preſent Impeached Lord as Criminal: His Intention throughout the Whole appears to be calculated for the alone Service and Benefit of the Suitors of the Court, without any Proſpect or Poſſibility of Advantage to himſelf. His Deſign was, to procure every Suitor full Satisfaction for his Demand: And if nothing had happen'd to interrupt ſo juſt a Deſign, 'tis poſſible that his great Zeal for the Publick Good, and his indefatigable Induſtry, might in due time have had their deſired Effect.

But greater Powers have now interpoſed; and this Difficulty being found to exceed the ſingle Authority of a Chancellor, may be thought to deſerve the greater Power, Care, and Wiſdom of the Legiſlature.

My Lords, What afterwards happened in the Caſe of Mrs. *Chitty*, is in part anſwered, in what has been obſerv'd upon the laſt *Article*; and I humbly apprehend, that a plain Narrative of that Fact, will be a ſufficient Anſwer to the Objection that has been made in this reſpect. The Earl of *Macclesfield* having no certain Account what Caſh of Mr. *Dormer*'s remain'd in his Succeſſor Mr. *Edwards*'s Hands, made Orders for Payment of Sums of Money, from time to time, as Application was made in Court; and particularly to pay Mrs. *Chitty* One thouſand Pounds, part of Eleven thouſand Pounds of her Money which had been brought into Court in Mr. *Dormer*'s time. Mrs. *Chitty* aſſigns this to Mr. *Lockman*. Mr. *Lockman* applies to Mr. *Edwards*, the preſent Maſter, for Payment, and is there diſappointed of his Money: Then he applies to the Lord Chancellor, and repreſents the preſſing Neceſſities they laboured under, That the Payment of One thouſand Pounds to him at that Juncture of Time, would be of greater Service to him than the whole Money could be at any future Day: That this Sum of Money, if immediately advanced, would make his Creditors eaſy; and without it, he muſt inevitably be thrown into a Goal.

This, my Lords, we ſhall be able to make out in Proof (tho' Mr. *Lockman*, upon his Examination, deny'd it,) and the late Chancellor, out of pure Compaſſion and Charity to this Gentleman, and believing his Circumſtances to be as he repreſented them, pays him the Money out of his own Pocket; and at the ſame time, or ſoon after, told him, that he muſt expect no more from him, but muſt wait 'till Mr. *Dormer*'s Effects could be got in, or the Money could be advanced ſome other way.

What Objection can be reaſonably made to this part of the Impeached Earl's Conduct? To deliver a Suitor in Diſtreſs; to extend a Charitable Arm to reſcue him from the very Gates of a Priſon juſt opening to receive him. If this be a Crime, and to be objected to him by the very Perſon who now enjoys his Liberty, as the Gift of this Noble Lord's generous but undeſerved Bounty; I muſt not pretend to ſay that he has many Virtues.

On the contrary, I hope it will abundantly appear to your Lordſhips, ev'n from this Inſtance, and from the whole Series of this Noble Lord's Conduct, that he firmly believ'd that all the Suitors of the Court, would, in due time, be made

eaſy, and their whole Demands be made good to them. And had the whole Body of the Maſters as chearfully concurred in this good Deſign, and contributed as generouſly to ſupport the Honour of the Court, and themſelves, 'tis more than probable that the Suitors would not long have had any juſt Occaſion of Complaining, nor your Lordſhips the Trouble of this Proſecution.

It was for this End, that the Maſters were ſo often called upon to make a reaſonable Contribution, and all Arguments made uſe of that would either perſuade or terrify them into a Compliance, in making the Suitors eaſy, 'till a proper Fund or Method could be found out to give them entire Satisfaction. Moſt of the Maſters, I think all but one, were convinced that this was a reaſonable and juſt Propoſal, and expreſs'd a Readineſs to come into it; and 'twas for this Purpoſe, that they were bid to conſider of the Conſequences of forfeiting their Offices, and of a Complaint in Parliament.

And for whoſe Benefit were theſe Arguments thus made and preſſed upon the Maſters? Who could profit by their Compliance, or ſuffer by their Refuſal? Not the Chancellor himſelf: He had no other Intereſt to ſerve, no Inclination to gratify, but a juſt Zeal for the Publick Good, and a generous Concern for the great Loſs that was like to happen to the Suitors of the Court, without his vigorous Interpoſition and Aſſiſtance.

This, my Lords, I humbly hope, appears to be the ſole and juſt Principle upon which this Noble Lord has founded all his Deſigns and Actions, to reſtore the Credit of the Court, which had been greatly injured by other Mens ill Conduct; to procure the Suitors in general the beſt Satisfaction that could be obtain'd; not partially preferring one to another, but endeavouring to do every Suitor full and equal Juſtice, in order as their Complaints were brought before him.

As to the Expreſſions proved to be made uſe of by the Impeached Earl, in the Caſe of *Harper*; ſurely they can have little weight.

Can it be imagined, that after ſo many Tranſactions had happened in the Court of *Chancery*, in relation to Mr. *Dormer*'s Misfortunes, and the great Loſſes that were like to happen to the Suitors thereby, the then Chancellor himſelf ſhould be the only Perſon that had never heard of it; and ev'n after ſuch time as he had been endeavouring to find out Means to remedy ſo great an Evil? Could any Man of leſs Sagacity than he muſt be allowed to have, conceive that he could be credited, ev'n in the Court wherein he preſided, in ſaying (as it is now repreſented) That he was a perfect Stranger to the Affair of Mr. *Dormer*; that he had heard nothing of it, but as idle News, a flying Report, that might be true or falſe? No, my Lords, that certainly could not be his Intention, in ſpeaking the Words that are ſaid to be uttered by him on this Occaſion.

But when a Purchaſer under the Decree of the Court, that had paid his Money into the Maſter, and required his Conveyances to be executed, could not procure the Parties intereſted to execute, without actual Payment of the Purchaſe-Money to them at the time of the Execution, and that Money was ſunk in Mr. *Dormer*'s Hands; this firſt brought the Deficiency of Mr. *Dormer* in Judgment before his Lordſhip; and it was the firſt time it came regularly before him in Judgment. Upon this he declared, That then it was a proper Time for him to make a ſtrict Enquiry into this Matter: He could not properly enter upon this Enquiry, upon the uncertain Reports of Perſons about the Town, or upon any private Converſation or Information that he might have received, and poſſibly might have the Expreſſion of common Talkers of News; but now that it came Judicially before him, he would throughly Examine into the whole Matter, and endeavour to apply a proper Remedy.

This, my Lords, we ſhall prove to be the Occaſion and Manner of the ſpeaking theſe Words, by Perſons that were then preſent in Court; and this happened but in *December* laſt was Twelvemonth; and accordingly it was ordered to be put under the immediate Examination of Mr. *Edwards*, who ſucceeded Mr. *Dormer* in the Office, and who muſt therefore be admitted to be the moſt proper Perſon to perfect that Enquiry, and alſo becauſe he was the moſt concerned in the Conſequences of it: But Time has been wanting to proceed as far as he intended in that neceſſary Work.

My Lords, Tho' by this time, it can't be pretended but the late Chancellor, as well as every other Perſon belonging to the Law, muſt know of Mr. *Dormer*'s Deficiency; yet I believe, that none had then diſcovered, or ev'n imagined how great it was; and that ev'n his Lordſhip, and moſt other Perſons, were perſuaded, that whatever ſhould appear to be wanting in his own Effects, would be ſupply'd by the other Maſters; or ſome other Method would be found out to prevent any real Loſs to the Suitors; and in Virtue of this Perſuaſion, Orders were made for Payment of Money to the Suitors, as they apply'd for it, without directing an Average.

This is exclaimed againſt, as contrary to all Equity; Some to have all, and others to loſe all, when they were all to be paid out of one Common Fund.

My Lords, Had it been proved to you, that when theſe Orders were made, it had legally appeared to the then Chancellor, that Mr. *Dormer*'s Effects would at all Events prove Deficient, and that no way had been foreſeen, whereby that Deficiency could have been ſupplied; I muſt admit this Objection would have been very ſtrong: And in that Caſe, to have order'd full Payment to thoſe Suitors who firſt applied, and left nothing for thoſe that came after, would have been a manifeſt Partiality.

But this is not the preſent Caſe. When the Court ordered the firſt Payments to be made, it does not appear in Proof (as I humbly apprehend) that there would at laſt be any certain Deficiency in Mr. *Dormer*'s Effects, or at leaſt no pretence of judging how great that Deficiency was like to be. And conſequently, the Payment of the whole Demand to the Suitors that firſt applied, does not neceſſarily infer that there would be any Loſs to thoſe which came after. His Effects, upon further Enquiry, might poſſibly come out to be more than were at firſt diſcovered; they might prove ſufficient to anſwer all Demands: Or in caſe the Deficiency was not very great, a moderate Contribution from the other Maſters, or, it may be, a reaſonable Addition intended to be made to that by the Chancellor himſelf, would have ſupplied

that

that Defect. And that this was really intended, I apprehend that the Evidence already given does abundantly demonſtrate.

Another Objection has been made; That very great Sums of Money have been depoſited in the Maſters Hands, without any Security; and that ſome Propoſals have been made to the Noble Earl, for ſecuring in ſome meaſure thoſe great Sums, and preventing the Maſters having too great Power over ſo great a Caſh.

Mr. *Lightboun*, one of the preſent Maſters, firſt mentioned the Propoſals: He had before communicated it to Mr. *Holford*. The Chancellor received it kindly, deſir'd him to reduce it into Writing; took Time to conſider of it, and frequently talked with him about it; always ſhewed an earneſt Deſire that this might be done, but thought the propoſed Scheme not effectual. Many Conſultations were had upon this Propoſal; at laſt he ſummons all the Maſters of the Court, the Regiſters, the Uſher, and other Officers of the Court; obtains the Favour of the Maſter of the *Rolls* to joyn with him and them in the general Conſultation; and every one expected ſome effectual Reſolution would have been made, upon this grand Affair.

But the Maſter of the *Rolls* then taking notice that there were other Things in the Court that required a Reformation, as well as this; and taking notice that the Maſters in *Chancery* had lately aſſumed to themſelves a Power of Judicature in the Court, in oppoſition to him; inſiſted, That this pretended Power of Judicature in the Maſters ſhould be given up by them, before he would enter into the Debate of the other Queſtion.

Mr. *Lightboun*, upon whoſe original Propoſal this Great Aſſembly was convened, was the firſt, if not the only Perſon that oppoſed the relinquiſhing this new-aſſumed Power, tho' he knew the Conſequence would be the Deſtruction of the other Propoſition which himſelf had made.

He preferred the Affectation of this Power of Judicature in his Office, more than the Intereſt of all the Suitors; and upon this, the great Expectation of this ſolemn Meeting was diſappointed, and nothing done.

What could a Lord Chancellor do more, that has the Honour of the Court and Intereſt of the Suitors the moſt at Heart?

Mr. *Lightboun* himſelf tells your Lordſhips, That after this laſt Attempt proved unſucceſsful, he began to think there was but one ſingle Lord in the World that had ſufficient Spirit to undertake it.

But during all this time, nothing had happened to give the late Chancellor any juſt Jealouſy or Suſpicion of the Deficiency of any of the other Maſters. They are proved to have often declared they were Sufficient; nay, they have themſelves ſworn, upon the giving in their Accounts, that they were able to make good the Balance. The Noble Earl Impeached, ſincerely thought they were ſo; and therefore when their Accounts were brought to him, in order to be laid before the Council, in Obedience to His Majeſty's gracious Commands, he did all that was in his Power or Capacity to forward that good Deſign, and make it ſucceſsful: He ordered the Maſters to ſpeed their Accounts: And when they were brought before him, he obſerving that the Senior Maſter had under-written his Account in a full, and plain, and more direct Manner than the other Maſters had done, he told them, He liked the Form which Mr. *Holford* the Senior Maſter had uſed, and thought it a proper Precedent for the reſt. They all complied, without Heſitation or Objection; no one pretended they had not Sufficient then in their Hands to make good their Balance; and accordingly ſubſcribed to it, That they were able and willing to Make-good their reſpective Balances; or to the like Effect.

Can it be imagined, that this ſo fair and candid a Tranſaction, intended for the Satisfaction of the Council, and the good Security of the Suitors, can by any means be interpreted an Impoſition upon His Majeſty, by the late Chancellor? It was for His Majeſty's Service that the Accounts ſhould be laid fully and truly before Him in Council; and it muſt likewiſe be a great Satisfaction to His Majeſty, to find that his Subjects Money in the Maſters Hands was ſecure, by ſeeing their Acknowledgment, under their Hands, that they were Able.

The late Chancellor knew no more than any of the reſt of the Honourable Privy-Council, or His Majeſty himſelf, that this Declaration was falſe; and therefore it was equally an Impoſition upon Him and Them; but no Fraud, no Crime in the Chancellor himſelf; which is the Objection now made againſt him. And indeed, many of the Maſters which have been now Examined before your Lordſhips, have, upon their Evidence, Declared, That the Subſcription thus made to their Accounts, were true, and that in Fact they have given good and effectual Securities to anſwer the reſpective Balances of their Accounts.

How hard a Work this Regulation of this great Abuſe in the Court of *Chancery* was, the late Experience has ſhewn; and a total Reformation of it hereafter, would have proved more difficult, without the prudent and cautious Preparation, which the Noble Earl within the Bar has made for it, and which in due time he might have been able to effect.

Thus, my Lords, I have endeavoured (but very imperfectly, I am ſenſible, and confuſedly) to offer what occurs to me in the Impeached Earl's Behalf. I ask your Lordſhips Pardon, and His, for taking up ſo much of your Time ſo unprofitably. What Omiſſions I have made, I doubt not will be ſupplied by the ſeveral Learned Gentlemen that are to ſpeak after me.

I have this very great Satisfaction, that before your Lordſhips, the Merits of this, or any other Cauſe, will not ſuffer through the Incapacity of the Advocate on the one ſide, nor the Solemnity of the Proſecution on the other. When Facts are proved before your Lordſhips, no Obſervations can be equally Inſtructing as your Own. And upon the Evidence given, your Lordſhips will undoubtedly form a Juſt Judgment: A Judgment, I humbly preſume to hope, That the Impeached Earl is Not Guilty of any of the Articles exhibited againſt him.

Dr. *Sayer*. My Lords, I am likewiſe a Councel for the Noble Earl Impeached.

I am afraid it may ſeem ſomewhat improper, that I ſhould engage in a Proceeding of ſo much Difficulty, foreign to the Profeſſion in which I am bred: But as the very great Obligations I have to the Earl, prevail on me ſo far to forget my own Unfitneſs, I hope they will, on your Lordſhips, to excuſe it.

The Articles exhibited by the Honourable the Houſe of Commons, charge him with *Corruption*

tion and *Extortion*, in the moſt odious Manner; and the Learned Managers have heighten'd every Circumſtance with the greateſt Art and Eloquence; every Ill-Turn which his Actions, his Words, his very Omiſſions could be imagined capable to receive, hath been given; Suſpicions and Jealouſies have been rais'd; and every Conſideration forgot, which could interpret them in his Favour.

This, my Lords, was their Duty, as Managers; and tho', by ſome, undertaken with Reluctance; yet, I may venture to ſay, it has been perform'd by all with great Succeſs and Reputation.

But however unanſwerable their Eloquence may be, we hope to be able to defend the Earl againſt the Facts they have alledged; and ſhew, That they were either not done, or done with Innocence and Honour. Againſt *meer Imaginations*, nothing can ſecure him, but your Lordſhips Candour and Juſtice.

The words *Orphans*, and *Widows*, and *Lunaticks*, have been employ'd to raiſe Tenderneſs and Compaſſion, and arm your Lordſhips againſt every Argument which we can offer. Well was it commanded by the *Jewiſh* Law, *Not to reſpect the Perſon of the Poor, in his Cauſe*; knowing the Diſpoſition of Human Nature, and the Neceſſity of guarding againſt this generous Weakneſs. This Caution ought particularly to be remembred by *Engliſhmen*, who are allow'd to be more ſubject to an Exceſs of it, than thoſe of any other Nation.

The Learned Managers have very rightly obſerv'd, how much your Lordſhips *Honour* is concern'd in this Proſecution. My Lords, It was with the greateſt Satisfaction I heard them ſay it; for I am by it induced to think, that notwithſtanding the Zeal which has been expreſs'd, they will be much pleaſed to find *every Member* of your Lordſhips Body *Innocent*.

It appears from the Anſwer, and needs no Proof, That the Noble Earl was once *Lord Chief Juſtice of the King's-Bench*: And his Conduct in that great Station, will, I hope, be ſome Defence.

I may appeal to thoſe Gentlemen who are now Managers againſt him, whether they have not applauded him with Warmth? whether they have not commended his *Zeal* and *Intrepidity* in the Cauſe of *Liberty* and *our Country*? his *ſteady Adherence* to *the Proteſtant Succeſſion*? his *uninfluenced Behaviour*? My Lords, I would ask, whether then they did not praiſe and love him? whether they did not eſteem his being *placed* in that High Station (which he executed with Honour) their *Comfort*, their *Security*.

My Lords, I beg Pardon for replacing thoſe Times before your Thoughts, or for deſiring any to conſider, how an Accuſation againſt him, ſupported by *meer Refinements*, would at that time have been regarded. My Lords, his experienc'd Merit would then have ſilenc'd every Objection.

If there wanted any Evidence of the High Character he bore while in that Station, we might appeal to the *great Rewards* His Majeſty has beſtow'd upon him: *Thoſe very Graces* which have been *exaggerated* againſt him, are the nobleſt Teſtimony in his Favour. His Majeſty thought him worthy of the *Great Seal*, becauſe he had found him *faithful* in his *other* Truſts. His Majeſty approved him, becauſe his Subjects had: It was for their Sakes (the conſtant Motive of his Choice) that He appointed him Lord Chancellor.

This once was the Earl's Character; this once his Merit: Theſe were, nay, are ſtill our Obligations to him. My Lords, *experienced Worth* has a Right to greater *Confidence* and *Credit*: This is a Rule of Evidence, and of common Juſtice; and unleſs the moſt convincing Proofs are offered, your Lordſhips never can believe, that one who has done ſo greatly Well, can do ſo Baſely as is ſuggeſted by the Charge.

But ſuppoſing, upon *ſo very ſtrict* an Enquiry into the Conduct of any Great Man, *ſomething amiſs* was found (for the Greateſt are but Men, and muſt have Failings) yet is former Merit not quite to be forgot. *Publick Services* are thought juſt Reaſons for *Remiſſion* of the higheſt paſt Offences, though done perhaps *meerly* with a *View* of obtaining it: And ſhall thoſe done upon a more generous Principle, ariſing from *an honeſt diſintereſted Heart*, deſerve a leſs Regard?

But, my Lords, that I may have the better Opportunity of obſerving, on the Evidence brought for the Commons, as well as on the Arguments offered, I ſhall beg Leave to follow the Learned Managers in the Method they took themſelves.

The Foundation of their Charge, is, The *diſpoſing of ſeveral Offices for conſiderable Sums of Money*. This is the *Corruption!* This the *Extortion!* And to aggravate the Guilt of this, and raiſe your Lordſhips Indignation, the Preamble ſets forth, "That in or about *May* 1718, the "Earl was appointed Lord Chancellor of *Great-*"*Britain*, and did thereupon take the uſual Oath "for the due Execution of that High Office, and "ſuch other Oaths as have been accuſtomed." And the ſubſequent Articles proceed to charge his Lordſhip *with Breach and Violation of his Oath, as Lord Chancellor*. The Learned Gentlemen who had the Conduct of the Evidence, juſtly ſenſible of the Expectation they had raiſed by this Aggravation, did *attempt* a Proof.

The Earl, in his Anſwer, had ſet forth at large, the Oath he took *as Lord Chancellor, when firſt appointed*; and had inſiſted, that he took *no other Oath of Office*. Was this the Oath the Earl had thus broke and violated? No, it was *not this*; but *one, which, by the Articles, he is no-where charged with ever having taken*. Upon the Choice of *Sheriffs*, it ſeems, the 12th of *Ric.* II. is annually, in *Old French*, read over by the Clerk; and all preſent at the Council kiſs the Bible. It is this Tranſaction with which they would affect the Earl. But, my Lords, it is notorious, that the Statute is ſo far grown obſolete, that in no other Inſtance beſides this of *Sheriffs*, is it at preſent taken notice of. And as the Oath upon this Occaſion muſt be abſolutely *confin'd* to the *Choice* of them; ſo is it evident, that the Statute it ſelf never did nor was intended to reach Officers of the nature with theſe in queſtion; as I ſhall further obſerve. And indeed, with the Oath directed, the Statute is ſo extremely rigid, that I muſt own, for my part, I do not ſee any Service it can do Society, in its full Extent. It may perhaps afford ſome *Protection* to a *Firſt Miniſter*, in laying him under the Obligation of an Oath, to put none into any Office who ſhall *purſue* or *ſolicit* by *himſelf* or by *other*.

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However I can't help thinking that the Learned Manager had but very ſmall pretence for the Reflection he was pleaſed to make, in ſaying, that *the Earl ſeemed to have forgot this Oath not only in his anſwers, but in his conduct*; when it appears that *he himſelf* had *forgot* how he had *charged* it in *his Articles*. If he will caſt his eye back upon them, he will find that the Preamble makes mention of *no Oaths*, but what were taken by the Earl *upon his Majeſty's Appointment of him to the Seal*, and the Articles charge him only with Violation of his *Oath, as Lord Chancellor*.

Having juſtifyed the Earl's *Memory* in this Point, I proceed to juſtify his *Conduct* in others; and I hope the Defence he has made by his Anſwer will have its Weight with your Lordſhips: the Earl has inſiſted, "*That the making Preſents has* "*been long uſed and practiſed in the Time of his Prede-* "*ceſſors*; *That ſuch Preſents have been reckoned amongſt* "*the antient and known Perquiſites of the Great-Seal*; "*that the making and accepting them has been Noto-* "*rious to all the World, and never before looked upon* "*as Criminal, or complained of as ſuch.*" My Lords, this (as far as Proof is requiſite) We ſhall make fully appear by great Numbers of Witneſſes, who are able to ſpeak to both the *Opinion* and *Practice* of the Earl's PREDECESSORS. To this, it has indeed been ſaid, that the Earl may be *Guilty*, tho' his Predeceſſors have *eſcaped uncenſured or unpuniſhed*. My Lords, the Examples we have followed are too Worthy to lead us into Guilt: but, my Lords, if the *Earl* has *only* done what *they* have done, and received what they eſteemed an honeſt Perquiſite; was the Practice in it ſelf not quite ſo regular at firſt, yet, *Sunt tolerabilia, quæ conſuetudo comprobat.*---Uſage (if antient) has ſo great Authority, that it makes the Common Law of *England*, and tho' with us it cannot repeal a Statute, or deſtroy its Force, which it does in other Countries, yet, my Lords, there is an Equity to be obſerved; and Reaſon as well as Humanity muſt inform your Lordſhips, that no Man ought to be treated with the utmoſt Severity, which an old Statute may direct; when great Examples may have *led* him to the Action, and a long Connivance of his Predeceſſors *promiſed him Security* from Cenſure.

But the Earl's Defence ſtops not here; he ſays, "*He humbly hopes that the giving or receiving* "*Preſents on ſuch Occaſions is not Criminal in it* "*ſelf, or by the Common Law, and that there is* "*not any Act of Parliament whatſoever, by which* "*the ſame is made Criminal, or ſubject to any Puniſh-* "*ment.*" To this the Learned Gentlemen have given but very general Anſwers. *Some* have by *Rhetorick*, inſtead of *Reaſon*, endeavoured to perſuade your Lordſhips, that the Act it ſelf is *highly Sinful*, and that the *Corruption* in *ſelling Offices* is greater and far more dangerous to Society, than even *ſelling Juſtice it ſelf: Others* have talked of Common Law, and Statutes, but have produced none, except thoſe *of* 12*th* of *Rich.* 2 and 5 and 6 of *Edw.* 6*th*, and a few Inferences drawn from them, which I ſhall ſpeak more largely to immediately: And as *the Learning* and *Experience* of thoſe Gentlemen are too great for any Law to *eſcape* their *Obſervation*, as is *their Honor* to *reſerve* any for their *Reply*, I ſhall take it for granted, that ſince no other has been mentioned, that there is no other.

My Lords, the Writers upon the Law of Nature have properly diſtinguiſhed between *ſelling Juſtice* and *Offices concerning the Adminiſtation of Juſtice*: and not as the Learned Managers have done. With them the *ſelling Juſtice* is abſolutely forbid, is abſolutely *Corrupt* and *Immoral*. The *ſelling Offices* is Matter of meer Policy, varied in different Governments, *prohibited* in ſome, *allowed* in others.

Among the *Romans* the Law in this Particular, fluctuated and changed, and tho' the *Sale of Offices* was generally forbid, yet it received great Alterations, as the Emperors or the People were diſpoſed: When Elections of the Magiſtrates were Popular, the *Suffragia*, or Votes of the People were bought and ſold; but as this Practice produced frequent Riots and Diſorders, frequent Laws were made to reſtrain it, which are ſtill extant, and part of the Body of the Civil Law: However, all proving unſucceſsful, the Emperors took occaſion from it to uſurp upon the People, and name the Magiſtrates themſelves: This Tranſlation of Authority carried the Benefit to *Courtiers*, and other Men of Power, who took a ſort of *Brokage* for their Intereſt. *Theodoſius*, the Emperor, ſo far gave Countenance to this Practice, that he even allowed an Action for the Recovery of what was promiſed for *Procurement of any Place*. In proceſs of Time the Emperors themſelves participated and took a Share of this Advantage, which introduced a diſtinction of *Suffragium Dominicum*, and *privatum*. *Suffragium privatum, quod Aulicis dabatur*; *& Dominicum, quod Imperialibus rationibus inferebatur*. This Diſtinction, as well as the Practice, is very Evident from the two *Novels* of *Juſtinian*, which were intended abſolutely to prevent for the future all Sale of Offices. In *Novel* 161. it is ſaid, *Ejuſmodi Dominica ſuffragia magnum reddebant pecuniarum cumulum*; and in *Novel* 8. that by the Prohibition, *Queſtus immodicus imminutur imperio*.

It is well known that in *France*, the Laws have varied in like manner. Sometimes the Sale of Offices were permitted, ſometimes forbid: but at preſent, and for this laſt Century, it has been ſo far incouraged, that Officers retain the Right of Reſignation even in *Succeſſion*, and tranſmit it to their *Heirs*, in caſe they have paid the *Annual Tax* or Duty within the Year.

I mention this to ſhew what the Opinion has been of other Governments, that they have not eſteemed this Practice ſo highly Criminal, or unreaſonable; and as they have not, ſo neither have we: for notwithſtanding what has been urged with ſo much Ingenuity (according to my poor Apprehenſion) *that very Statute* of *Edw.* 6*th*, ſo much inſiſted on, is the ſtrongeſt Proof which can be given, not only that in particular inſtances *the Sale of Offices* is now permitted, but that it *was in general* before that Statute, by the *Common Law of England*. This Statute in Sect. 3*d*. Enacts, that "*All Bargains, Sales, Promiſes*, &c. *ſhall be* "*void.*" And yet by Sect. 6*th*, it makes Proviſion, that "*It ſhall not extend to any Bargain,* "*Sale, Gift, Grant*, &c. *concluded and agreed* "*before the Firſt Day of* March *next coming, but* "*that the ſame Bargain and Sale ſo concluded* "*and agreed, ſhall always remain, continue, and be* "*in ſuch force, ſtrength, and effect, as if this Act* "*had never been had or made.*" If *Bargains* and *Sales*, agreed before the Firſt of *March*, are to *continue in ſuch Force*, &c. as if this Act had never been made, the Conſequence to me ſeems cer-

tain, that *thoſe Bargains and Sales had Force*, and that they were *before Effectual and Legal*; for otherwiſe the Proviſion would be abſurd and ridiculous.

The 7*th* Section of this Statute ſtill goes further, and makes a perpetual Proviſion, that "*This* "*Act, or any thing therein contained, ſhall not in* "*any wiſe extend, or be prejudicial or hurtful to any* "*of the Chief Juſtices of the King*'s *Courts, commonly* "*called the King*'s *Bench, or Common Pleas, or to* "*any of the Juſtices of the Aſſize that now be, or* "*hereafter ſhall be; but that they, and every of them,* "*may do in every Behalf, touching, or concerning* "*any Office, or Offices to be given or granted by them,* "*as they, or any of them, might have done before* "*the making of this Act.*"

If this Statute be *Explanatory* of what the Common Law was before, and as ſuch it was inſiſted on, it is certainly impoſſible to doubt, but that by the *Common Law* the *Sale of Offices* was allowed: "*the Chief Juſtices*, &c. *may* (*TOUCH-*"*ING THEIR OFFICES*) *do as they might* "*have done before:*" This Act is to *prevent* the *Sale* of *Offices*, and yet *not of their Offices:* They had been uſed to *bargain*, and *ſell* them, and *ſtill* may do it, for this Act is not to be in any wiſe *prejudicial*, or *hurtful*, to any of them. This is the plain Senſe, this the very Language of the Proviſion.

But I humbly conceive that this Proviſion is not only an Evidence of what the *Common Law it ſelf* was, but that the *Act of Richd.* 2*d.* (of which I before made mention) could never be intended to *reach Offices of this Nature*; for as the Act of *Richd.* 2*d.* directs an Oath, which the *Chief Juſtices*, &c. are expreſly *required* to take, can it be imagined without the greateſt Extravagance of Fancy, that the Legiſlature ſhould be ſo very forgetful, as to *guard* and *ſecure* to them a *Privilege*, which they could never exerciſe without the higheſt *Perjury?*

This, my Lords, is the only Statute, which, as I apprehend, any ways concerns the Charge brought againſt the Noble Earl: But does this Statute make the *Sale of Office Criminal?* Does it direct a *Puniſhment*, or even by any general Clauſe *forbid* the Practice of it? 'Tis true the *Bargains* are hereby made *void*, the Perſon who *ſells*, does *loſe* his *Right of Nomination*, and he who *gives* or *pays*, is to be adjudged *diſable* in Law to have the Office. My Lords, theſe are the *Diſcouragements*, which the Legiſlature then thought proper to lay ſuch Bargains under, theſe the *only Penalties:* If the Earl has by his Conduct done what this Statute diſapproves; if he has bargained and ſold Offices, which your Lordſhips judge within the Statute, and the *conſtant Uſage* of his Predeceſſors will not give *Protection*, the Statute points out your Lordſhips Juſtice. But, my Lords, this unfortunate Great Man, we think, has already more than *ſatisfyed* this Law, he has *reſigned the Seals*, and yet *ſtands Impeached* before your Lordſhips.

Offences are to be judged of by the *Penalties* and *Puniſhments* the Legiſlature has annexed; for in determining the Penalties, it determined the Senſe it had of the Offence: When Penal Laws are made, it muſt always be ſuppoſed, that a Conſideration was had of the Malignity of the Act forbid, and of its Influence on Society, and that the Puniſhment directed was eſteemed adequate and juſt: By this rate it is eaſy to gueſs what the Legiſlature thought of the Offence of ſelling Offices. And, indeed, it would have been (if I may uſe the Expreſſion) unbecoming the Legiſlature to have *inflicted ſeverer Penalties*, while by the ſame Law it *permitted* the *firſt Judges* in the Nation *to do* what it *ſeemed* to condemn in others.

When a Law is once paſt, the Tranſgreſſor of it is *ſubject only* to what that Law directs; to inflict a *greater* Puniſhment, would be deſerting Law, and acting *arbitrarily*. This Obſervation will hold in every Inſtance, in Matters of *Common Juſtice*, as well as *Publick Policy*: To forbid to *Rob*, or *Murder*, is only to enforce what was *always* Law; to forbid *to ſell Offices*, is to lay a *Political Reſtraint* on Acts indifferent. And yet in the former Caſe, to puniſh the Offender *beyond* the Law, would be *unjuſt* and *arbitrary*. Are Prohibitions *meerly Political more Sacred?* Or is a Treſpaſs againſt them more ſeverely to be treated, than one againſt the Law of Nature, the Law of God? No, Your Lordſhips (I ſay it with Submiſſion) are the Supreme Judges of the Nation; as ſuch, the Supreme Judges *of the Law*; for *by the Laws* your Lordſhips always *judge*: It is the peculiar Bleſſing of our Nation, to have *known certain Laws*, to be the *Guide* of our *Actions*, and the *Meaſure* of our *Puniſhments*; to ſecure to us *this* Bleſſing has been the *Labour* and the *Glory* of our Anceſtors. For the Sake of *this*, the REVOLUTION is *beloved*; and for a ſteady Adherence to *this Sacred Rule*, his MAJESTY is eſteemed the *Joy*, the *Safety*, the *Liberty* of his *People*.

I beg Pardon for dwelling ſo long upon this Subject; but the Honourable Gentlemen of the Houſe of Commons having made the *Sale of Offices* the *Foundation* of their whole CHARGE, I thought it of ſome Conſequence to prove to your Lordſhips, that it is no ways *Criminal* in it ſelf: And, my Lords, if it be not *Criminal*, Where is the *Corruption?* Where the *Extortion?* Is it in the *Manner* of receiving Preſents? How *that* was, the *Learned Serjeant* of Councel with me has already given your Lordſhips an Account: An Account, which we hope does ſufficiently *juſtify* the Earl againſt the Imputation of *Higgling*, or of *ſcrewing up the Candidates* to what they gave. But as theſe ſeveral Articles will be more fully ſpoke to, when we come to produce our Evidence, I ſhall paſs them over with an Obſervation or two. If the Earl had ſo great a *Thirſt for Gain*, and was ſo *reſolutely bent to amaſs ſuch exceſſive Sums of Money*, it is to me very ſtrange, that whenever his Opportunity offered, and he had the *free* and *full Diſpoſal* of an Office upon a *Vacancy by Death*, he ſhould always receive *a much leſs Sum*, than what from the very face of the Articles themſelves appears conſtantly to have been paid *by Maſter* to *Maſter*. Had the Earl *put the Office up to Auction*, or even *inſiſted* on a Price, Is it probable that he ſhould *not* be *able* to obtain one *as great?*

However, as I paſs, I can't help taking notice of the Circumſtance with which the Article of Mr. *Thurſton*'s admiſſion is introduced, "*That* Borret "*died inſolvent, greatly indebted to the Suitors, and the* "*ſaid Earl did without ſecuring a juſt Satisfaction admit him:*" Your Lordſhips muſt have obſerved, that the Earl is not ſo much as *charged* here with a *knowledge of this inſolvency*; and, my Lords, *knowledge* only can *create* the *guilt*. If the Earl did not know it, can your Lordſhips cenſure him? If it be

asked

asked why he did not? Mr. *Godfrey*, who was produced and Examined by the Managers, has already given a full Anſwer: Mr. *Godfrey* was moſt intimate with the Affairs of *Borret*, and as ſuch was directed by the Earl to inſpect them; he has depoſed, that he told the Earl, he thought *there wou'd be no deficiency in his Office*, this (your Lordſhips may remember) he ſaid was his *own* ſincere Opinion, and he gave good Reaſons for it. Mr. *Borret* had a very good Income, reputed 400*l. per An.* beſides his Place, he had lately married a Wife of Fortune, his Family lived with his Father-in-Law, and he himſelf a Man of no Expence; my Lords, Mr. *Godfrey* told you, he was ſo fully in this Opinion, that when Mr. *Green*, the deceaſed's Unkle, made a demand of a Debt, he was *greatly ſurpriſed, not Imagining that he had owed one ſingle farthing*. Whence this Deficiency (if there is any) none can tell: But, my Lords, that fatal Year of 1720 is not ſo long paſt, as to leave us quite without conjecture; a Year, my Lords, when the *contagion* was ſo virulent, that ſcarce any *virtue* was left *uninfected*; and thoſe who ſunk under it, remarkably deſerve our pity, as ſad inſtances of human frailty: *To this Year*, the Maſters *owe* their whole *diſtreſs*, and *to them* the Earl, tho' innocent, *this aggravated Charge*: But, my Lords, ſuppoſing a *deficiency* in *this* Office, and *known* too by the Earl himſelf, what *Satisfaction* to the Suitors was from him expected? What could he poſſibly *ſecure?* There is but *one Method*; which, I hope, he will not by the *Managers* be thought *criminal* in *not* taking, ſince it is *that*, which *they themſelves* condemn as *illegal* and *corrupt*.

It may be expected, that I ſhould ſhew ſome Regard to the 9th Article: But as it is that which the learned Gentlemen made choice of to *begin* with, I apprehend *greater* Difficulties than I ſee, and therefore ſhall leave the Conſideration of it to thoſe, who are much more able to ſurmount them than myſelf: But I muſt ask Pardon, that I can't reach a diſtinction on which great ſtreſs has been laid: It has been obſerved by more than one, that in this caſe, the Money was paid for the *reſignation*, and not for the *admiſſion*; Is there any real difference, whether the *Buyer* or the *Seller* pays the *Complement?* Muſt it not be ſuppoſed that it was conſidered in the Bargain, and part of it? Or is it imagined that a greater hardſhip was in this caſe done Mr. *Thomas Bennet*, by a ſeeming *obſtruction* of his inclination to part with an Office, when in fact the Earl could not *hinder* his reſigning it? For notwithſtanding the Obſervation made by a learned Gentleman, that the *Lord Chancellor* was the *King's Officer*, and therefore a reſignation *to the Crown* was the ſame as *to him*; yet am I from his very great Abilities perſuaded to believe, that he is not ſo entirely a ſtranger to the *Thought* of that *high Office*, as not to be able to diſtinguiſh the *Crown* from the *Seal*, and to know that in many inſtances of *Patronage* they are *different:* The *Lord Chancellor* being the *King's Officer*, a *reſignation* to *him* may in ſome caſes be equivalent in Law to one made to the *Crown* itſelf, but never *è contrario*. As to this particular Office, and indeed to many others of the like Nature, we ſhall make it fully appear, that tho' the *Officer* himſelf is in the *Nomination* of the *Crown*, yet has he always been under the *recommendation* of the *Seal*, and has as conſtantly *paid acknowledgment* to the *Lord Chancellor*.

Upon theſe Charges are built the whole of the following Articles: Every Expreſſion, every Action which could bear an ambiguity, has been collected to *form* a Crime. The Earl has *received* Money for *his Offices*, his *aim* is therefore *gain by Sale of Offices*, an eaſy inference; and whatever is after *ſaid* or *done*, or *vice verſa*, is at firſt *ſuſpicion*, and then an *Evidence* againſt him.

But, my Lords, before I proceed to try Particulars upon this Head, I muſt beg your Lordſhips patience to compute in general the very ſmall Advantage the Noble Earl could propoſe by the *Scheme*, the learned Gentlemen have *projected* for him: The *Office* of Lord Chancellor is *precarious*, and only *during Pleaſure:* The *King*, for his Subjects Welfare, *jealous* of every Miniſter, and *ready to remove* the greateſt Favourite upon the very firſt Offence; and upon this contingency, what would the *chance* of diſpoſing of a Maſter's Place be worth? A very trifle, I may boldly ſay, not ſo much as what he has *refuſed* the Opportunity of *gaining* upon *every compleat vacancy* he has diſpoſed of. And can your Lordſhips ſuſpect a Character *once ſo dear*, once allowed *ſo worthy*, of doing ſuch little Things, I ſhould ſay, ſuch baſe Things, for *no Advantage*, and yet to promote *this illegal and corrupt Gain on which his Heart was eagerly ſet*? The noble Earl is further charged "*with having admitted ſeveral Perſons to the Offices of Maſters, who were at the time of ſmall Subſtance and Abi-*"*lity:* Againſt this there lay an obvious Objection; Why Perſons of ſmall Subſtance? when the Earl *might have*, and indeed *always had*, when of his own Choice, others *of ſufficiency*. Wherefore, to make their Charge conſiſtent, a *fraudulent* Method is ſuppoſed to be introduced of *paying for their Places out of the Effects of the Court*; a Method *beſt ſuited* to *ſuch Perſons*: But your Lordſhips Juſtice muſt have led you to obſerve, that they *no where* ſo much as *inſinuate*, that the Earl *knew* them to have been as charged: They were ſenſible of the proper Caution he had taken, and (as it will appear in Evidence) that not only previous Inquiries were always made, and *none* admitted, who came not *well recommended*, or *perſonally known* to the Earl himſelf; but that when ſeveral Candidates have offered, his Lordſhip has been ſo unmindful of the *little Views*, he is ſuppoſed ever to have acted with, that he has *conſtantly preferr'd* him he thought the *worthieſt*, tho' the *preſent* to the Earl was far *leſs* than what others gave him Expectation of. This ſurely, my Lords, will be enough to *Vindicate* his *Care*; and tho' it ſhould appear, that he was *deceived* in any *ſingle Inſtance*; nay, tho' *the Man himſelf* ſhould be the *Evidence* of *his own Deceit and Fraud*, yet I hope, my Lords, *ſuch Perſon* will have his full Compliment of Credit, if he is *believed* in the Character he gives of *himſelf*. But to make ſome excuſe for the Earl's *good Opinion* of this Mr. *Thomas Bennet*, and his *Circumſtances*, I muſt obſerve, that it is Evident from his *own Account* which lyes upon the Table, that *when* he was admitted, he had an *Eſtate* of between 5 and 600*l. per An.* he had beſides *an Office* for Life of 250*l. per An.* he *kept* his *Coach*, and *then* lived in *Reputation:* However, I muſt confeſs, that in further Proof of his *great Integrity*, this Gentleman has depoſed, that *part* of his Eſtate was then *Mortgaged* for *more than it was worth*. I ſhould upon this

this Occaſion put your Lordſhips in mind of what happened upon this Gentleman's *Confrontation*, becauſe he has been *ſingular* in his Evidence on *more* Facts than *one*; but we ſhall take another Opportunity of diſplaying this *Worthy Perſon's Veracity*, that your Lordſhips may know *how much Regard* to pay to *him*, by ſeeing *how little Regard* he has for *Truth*.

As to the *Schedules*, the neglect of which is made ſo *Criminal*, it would be enough to ſay, that the taking them could not prevent *the Fraud* complained of; for what would be the difference in *deducting* the *Sum agreed on for the Purchaſe upon the transfer*, or *repaying in the minute after*? And if the new Maſter is *really able* and *ſufficient*, where is the *injuſtice* done in either caſe? But we ſubmit whether ſuch Schedules muſt not be made between Maſter and Maſter: For without them their Accounts cannot be ſettled; and as it is for the *Intereſt* of him who *ſucceeds*, ſo is it for the *Security* of the other who *reſigns*. But ſuppoſing the Practice to have been as charged, and their *Transfers* were not *compleat*, the only Conſequence I ſee is, that *both* Maſters are *bound*, and the Suitors have by it a *double Security*. It has happened ſo in the Caſes of both Mr. *Hiccocks* and Mr. *Rogers*; they imprudently *retaining* the Effects of the Court, for the Sale of their Offices, have thought it proper to Petition the Lords Commiſſioners to *repay* the Money: So that ſome good Fortune has attended this Practice, ill as it is, the Suitors have by it got ſo much Money more, than what otherwiſe they would have had.

My Lords, when *Dormer*'s Affair (tho' ſufficiently unfortunate) is conſidered by your Lordſhips, I hope that the noble Earl will not be thought to have acted otherwiſe than as *became* his Character: Upon the firſt notice of the misfortune, the Earl took all poſſible care both to *ſave the Effects*, and *ſecure the Office*; he ſent the two ſenior Maſters to *ſearch his Chambers*, and to *ſtop the Transfers* of all Stock, which ſtood in his Name, in any of the publick Companies. My Lords, had the Earl that *Eye on Gain*, had he had *that apprehenſion of diſcovery*, which is repreſented, he would ſcarce have taken *this laſt ſtep*, which muſt and did make a *ſuſpicion* of the Office *publick*: When Mr. *Dormer* was returned, and upon *ſuch Terms* as the Managers themſelves can't ſay were unreaſonable to grant to one, whoſe Perſon was out of reach, and whoſe Effects and Accounts were in the greateſt Confuſion: His Liberty was all he asked, and that upon Condition only of a *full diſcovery* and a *fair Aſſignment of all he had*. I ſay, my Lords, when Mr. *Dormer* was returned upon theſe Terms, which we hope he has honeſtly performed, his Office was Sold, and every Thing done, *not to Conceal*, but to *ſupply* the *Deficiencies*. I would not enter too minutely into the *Compoſition* with Mr. *Wilſon*: It will, I conceive, be a full and ſatisfactory Anſwer to the Charge, to obſerve, that as the Suitors were not *Parties* to it, they can no ways be *injured* by it. If the *Compoſition* be *precarious*, *trifling*, and *unjuſt*, the Suitors are ſtill *at Liberty* to proceed: If *more* could be had, they ſtill may have more; but till *more* is *recovered*, it muſt be admitted that the *little*, which is *gained*, is *owing* to the *Compoſition*. Had the Suitors been *Parties*, *the Order* ſo much complained of for its Irregularity would not have been made *without a Notice*; but as Mr. *Wilſon*, whoſe particular Intereſt it was to have them Parties, did not deſire it, we apprehend *the Order* to be *in uſual Manner*. My Lords, the Maſters (as is in Evidence) having in ſome Meaſure *engaged themſelves* to make good the Deficiencies, if any ſhould happen, the Earl could have no reaſon to doubt the Juſtice of the *Propoſal* of Mr. *Wilſon*, after Mr. *Hiccocks* had *reported* it, and Mr. *Edwards*, the *Succeſſor* in the Office, had *prayed* the Earl to *order him to accept it*.

It ſeems, my Lords, a very forced and unkind Conſtruction, which the Articles put upon the *Accounts* his Lordſhip had *required* of the Maſters: but the worthieſt Behaviour may be thus miſconſtrued. The Maſters themſelves had *made the Propoſal of contributing*, and it will appear that they all (except Mr. *Lightboun*) did pay their Money *voluntarily*. What occaſion then for ſuch Methods as are ſuggeſted to *terrify* and *oblige them to this Contribution*? Is it in Proof that the requiring the Accounts did *influence one ſingle Maſter*? No, my Lords, but, on the contrary, you will find that the *Payment* by the Maſters did not prevail on his Lordſhip to deſiſt; for it will be in Evidence, that the Earl *ſtill* perſevered, and that by the Earl's direction a *Letter* was wrote to the Maſters, *after* the ſeveral *Payments* were made, complaining of their Delay, and requiring their Accounts. The Earl, indeed, upon Repreſentations, did afterwards think the Method *impracticable*, which he is the better juſtifyed in ſaying, becauſe the very *ſame Method* has been *ſince* found ſo by *the Honourable Committee for Inſpecting their Accounts*, *and* departed from *as ſuch*.

Upon this Subject of *Dormer*'s Deficiency, I muſt beg Leave to remind you of what Mr. *Edwards* told your Lordſhips. He ſaid, "*That they* "*were all of Opinion, that the Deficiency would be* "*made up*; *and unleſs he had believed it, he would* "*not have entred into the Office.*" If Mr. *Edwards*, who was ſo much concerned, was in this Perſuaſion, why might not the Earl too with Innocence? And, my Lords, this Perſuaſion, this Expectation, is, I humbly conceive, a very ſatisfactory Reaſon, why the Earl, had he been obliged to have declared an Average *ex officio in common Caſes*, might be excuſed the doing it *in this*.

As to the Caſes of *Chitty* and *Harper*, when the Circumſtances which attend them, are laid before your Lordſhips, the Inferences drawn from each will appear equally unreaſonable: for the Earl can no more be ſuppoſed to have intended a *Concealment* of *Dormer*'s *Deficiencies by the Order* he made, *after* he had expreſsly mentioned *in open Court* the *ſeveral Accidents*, by which they had happened, than he could by *the payment of* 1000 *l.* to Mr. *Lochman*, *when* he told him, *that it would be the laſt payment Mrs.* Chitty *was likely to receive*, *the reſidue being in great danger from* Dormer's *Deficiency*. But when we prove to you the very great diſtreſs Mr. *Lochman* repreſented himſelf to be in, your Lordſhips will be convinced that the Money was by the Earl advanced from *no other motive*, than *a generous and compaſſionate Regard to him*: This at *that time* was Mr. *Lochman's own Senſe* of it, this he has *often ſince acknowledged*, tho' upon his Examination he was pleaſed to *claim* it *as his Right*, and *own no Obligation*.

I think

I think it will be (I ſhould ſay, it is already) very full in Proof, that the Earl deſired a *thorough Reformation* of *his Court*; and tho' Difficulties have obſtructed it, yet ſurely, my Lords, it can't be imputed to any omiſſion of his in the light the Charge would place it. There were *Difficulties*, not only with Regard to the *Maſters* and their *Accounts*, but to their *Juriſdiction* and *Privileges*: *Difficulties* of ſuch a nature, that one of the Witneſſes thought, they required the *greateſt Reſolution* to *ſurmount them*. If the noble Earl had not a *Reſolution quite ſufficient*, it might perhaps be his misfortune, but ſurely not his Fault. But what *Propoſals of Security* the Maſters could poſſibly make, which *they* eſteemed *uſeful* or *convenient to themſelves*, and the *Earl* ſhould *refuſe*, I can't conceive. I imagined from *the Scheme*, on which the Charge is founded, that *their Intereſt* had been the *ſame*, had been *one*, and what ſerved *their* purpoſe, muſt have ſerved *the Earl's*; and yet now we are told the contrary.

How the Learned Gentlemen have made out the ſeveral *Deficiencies*, muſt be conſidered, when we are upon their Evidence to that Article: I will only obſerve, that no *permiſſion* or *encouragement* of the Earl's has been proved, by which they are *increaſed*; that *no Money* has been *compelled* into Court by any *Order he* has ever *made* to *advance* their Offices, nor any *Countenance* given by *him* to any one *ill Practice*.

How far the Earl is guilty of *obſtructing the inquiry his Majeſty had directed*, or how far he was inſtrumental in *deceiving the Council-Board*, we ſubmit upon their own Evidence: It appears, that at the meeting at Mr. *Edward*'s Houſe, *all* of them *declared* they were *able* to anſwer their ſeveral Ballances; and when the Subſcriptions were Signed, *they* were *believed* to be as they had declared themſelves: If they were, where was the *Fraud* in the Propoſal *to aſſiſt each other?* Or how could it be underſtood *to make a falſe Appearance* with Propriety of Language, or common Juſtice? But it is remarkable, that this *Advice*, however fair and honeſt, was not given by the *Earl*, but by Mr. *Cottingham*, and without his *privity* or *knowledge*, and *occaſionally* in Converſation with the Maſters: And as to the *Subſcription*, which they *added*; did the Earl uſe any Arguments to perſuade them to it? Did he preſs them, or even *deſire* them to Sign it? No, they themſelves confeſs, that *he* but *barely recommended it, as being what their ſenior Maſter had, and better in Form than ſome others, which were then produced:* He uſed no Arguments, he preſt them not; and they, *honeſt Men* (as they themſelves have depoſed before your Lordſhips) made no Scruple or Objection to it; I beg Pardon: I ſhould do Juſtice to Mr. *Thomas Bennet*, who I think had *his Scruple* to the Word *Demonſtration*. So that if *falſe Repreſentations* have been made, they who have *made* them are the *guilty*, *they* have *deceived* the Council-Board, and *not the Earl*; the Action was their own, free and unſolicited.

But, my Lords, not to detain your Lordſhips longer; one of the Learned Managers ſeemed ſenſible of the force of *one* Evidence we have to offer in Vindication of the Earl from the Charge of *Avarice*; and therefore, without denying a *publick Fact*, he was pleaſed by his *Eloquence* to try whether he could not bring *Charity itſelf* under ſuſpicion: Whether he could not *confound* the difference between the *moſt worthy Generoſity*, and the *Luxury* and *Debauchery*, and *the Riots* of a *CATILINE!* What innocence is *ſecure* againſt the *Power* of *ſuch* Eloquence? My Lords, had he not thought *this* a Defence againſt the *very Foundation* of the whole Charge, he would not have *ſurpriſed* us with ſuch an Anſwer: He well knew that the Earl could have *Orphans* and *Widows*, *the poorer Clergy*, and *the Youth of the Univerſity*, to appear and acknowledge their *Obligations* to him; *Obligations* made *greater* by being *unasked*; I cannot ſay *unexpected*, becauſe every Object in diſtreſs within his Knowledge, had Reaſon to expect Relief. I would ask the Learned Gentleman, whether Expences of *this kind* were part of *CATILINE*'s Profuſeneſs?

This, my Lords, will be an Anſwer to their oft repeated Imputations, and muſt clear the Earl from all *ſuſpicion* of ever having acted from ſuch ſordid motives, or from any *thirſt* or *impotence of Gain*. Is it likely that he ſhould *incourage* the *higheſt Villany* to *raiſe* a Sum, and then *apply* it to *relieve the Poor* and *the Diſtreſt*? Is it credible, at the ſame time, that *Virtue* and *Baſeneſs* ſhould thus *jointly* govern him? Hard indeed is the Condition of the Earl, when *his very Virtues*, when *his moſt commendable Actions*, are *turned to his Diſgrace* and *Injury!* But under all, it is a great Satisfaction to him, that your Lordſhips are his Judges; and he ſubmits his whole Conduct to your Juſtice.

Mr. *Lingard*, Common Serjeant.

My Lords, the Gentlemen that have gone before me upon this Occaſion, have ſo fully opened the Nature of the noble Earl's defence in general, that I ſhall not preſume to take up any more of your Lordſhips Time, by following them in that Method; but ſhall confine myſelf to the 5th, 6th, 7th, 8th, and 9th Articles; and ſhall beg leave to inform your Lordſhips what we have to lay before you in relation to the Matters contained in thoſe Articles. But before I proceed, I ſhall beg your Lordſhips Permiſſion to go out of thoſe Articles, ſo far as ſhortly to obſerve, that in the Preamble to the Articles of Impeachment, where the ſeveral Favours and Advantages, which the noble Earl at the Bar received from the Crown, are enumerated, thoſe which were the peculiar Marks of his Majeſty's Royal Bounty to him, and thoſe which were the ordinary Benefits and Allowances, which the Earl enjoyed in common with his Predeceſſors in that Office, are ſo blended together, and ſet in ſuch a light, that at leaſt it gives an occaſion to miſtake ſome of the latter Sort, for thoſe of the former; if it does not amount to an Inſinuation to that Purpoſe, in order to enhance the particular Advantages which the noble Earl has received, above what they really were.

My Lords, I ſhould be injurious to that noble Lord, who is poſſeſſed with Sentiments of the deepeſt Gratitude to his Majeſty, ſhould I endeavour to leſſen the Inſtances of his Royal Munificence towards him: And I purpoſely omit mentioning any thing of the noble Earl's Merit upon this Occaſion (tho' I humbly apprehend that I ſhould be thought very excuſable in ſo doing) becauſe I am ſenſible, that he chooſes to owe every thing purely to his Majeſty's goodneſs: Yet as he has (very properly as we humbly apprehend) in his Anſwer, ſet one of thoſe Matters in its true Light; by informing your Lordſhips that the Annual allowance of 4000 *l. per Ann.* mentioned in the Preamble to the Articles, and which he admits to have been granted to him, during the Time he ſhould continue Lord Chancellor, is no way particular in his Caſe; but that the ſame has, for many Years paſt, been conſtantly granted to, and enjoyed by his Predeceſſors; give me leave, my Lords, for a Proof of what is ſo inſiſted on, to refer your Lordſhips to what appears upon your own Journal, in the Caſe of the Lord *Somers*, upon the Impeachment exhibited againſt him by the Houſe of Commons, for high Crimes and Miſdemeanors; wherein the Introduction of the Charge in the 8th Article, this Appointment of 4000 *l. per Ann.* to him is alledged in Aggravation of that Charge againſt him. His Lordſhip, by his Anſwer thereto, admits, that during his Cuſtody of the great Seal, he did receive the Profits and Perquiſites thereto belonging, which before his Time were become very inconſiderable; and that he did alſo receive an Annual allowance from his then Majeſty of 4000 *l. per Ann.* being the like Penſion that had been allowed to ſeveral of his Predeceſſors. This, we humbly apprehend, plainly ſhews both that this allowance has been uſual, and likewiſe the Reaſon of making ſuch allowance; which is the inconſiderableneſs of the ordinary Profits and Perquiſites belonging to that high Station.

I ſhall now proceed to the Articles I propoſed to ſpeak to; in which the Matter, which is charged as Criminal upon the Earl, is, That he did illegally, corruptly, and extorſively, inſiſt upon, take and receive, the ſeveral Sums of Money therein reſpectively mentioned, for the admitting the ſeveral Perſons named in the 5th, 6th, 7th, and 8th Articles, to be Maſters of the Court of *Chancery*; with a ſmall variation in the 8th Article, by way of Aggravation, that there was a deficiency in that Office; which is there taken notice of: And for permitting *Thomas Bennet*, as it is alledged in the 9th Article, to reſign his Office of Clerk of the Cuſtodies; which is agreed to be a Charge much of the ſame Nature with that in the four preceding Articles; and is alledged to be againſt the good and wholſome Laws and Statutes of this Realm.

It has been ſtrongly inſiſted on, by the Gentlemen appointed to manage this Proſecution, that this is a Matter which is *Malum in ſe*, and conſequently a Crime at Common Law, as well as expreſly againſt the Statute of 12. *Rich.* 2d. and 6th of *Edw.* 6th. and no Means, that could be thought of, have been wanting to repreſent it under all the moſt aggravating Circumſtances, and in the moſt odious and frightful Appearance, that the blackeſt Colours could give it.

My Lords, The Earl by his Anſwer denies that he did at any time inſiſt upon the Sum of 105 *l.* or any other Sum of Money, to permit or accept of the Reſignation of *Thomas Bennet*, mentioned in the 9th Article; or did refuſe to permit or accept thereof, until the ſaid *Thomas Bennet* had agreed to pay the ſame, or any other Sum of Money on that Account: Which is a denial of that, which is properly the Charge in that Article: He does indeed admit, that he did receive a Preſent from *Thomas Bennet*, under the Circumſtances mentioned in the Anſwer to that Article; and likewiſe that he accepted the Preſents, which were freely and voluntarily ſent to him, by the ſeveral Perſons mentioned in the four preceding Articles; in two of which Inſtances, all, and in the other two, great part of what he ſo received, has been returned. But his Lordſhip very rightly (as we humbly apprehend) inſiſts upon it in general, that the acceptance of Preſents upon ſuch Occaſions has been long uſed and practiſed by his Predeceſſors; and that they have been reckoned as the antient and known Perquiſites of the ſaid Office: That it is not Criminal in itſelf, or by the Common Law, or againſt any Statute of this Realm; or ſubject to any Judgment, which can be prayed in this Proſecution.

The Gentlemen of the Houſe of Commons, my Lords, in order to ſupport what they have inſiſted upon, and to make it appear that ſuch an Acceptance of Preſents is Criminal, have cauſed the Statute of 12. *Rich.* 2d. to be read to your Lordſhips; and have produced Mr. *Ayres*, to give an Account of the Ceremony, which is annually practiſed upon the Occaſion of Nominating of Sheriffs.

I won't preſume to act the Caſuiſt, or trouble your Lordſhips with any Niceties, by queſtioning, whether what paſſes upon that Occaſion ought to be eſteemed an Oath or no; but, my Lords, I hope I may venture to ſay, that it is very plain, it is no Oath of Office in general, for this Reaſon, becauſe if it had been ſo, the once taking it had been ſufficient; and there would have been no occaſion of repeating it Annually, in the ſlight Curſory manner Mr. *Ayres* has given an Account of, upon one particular Occaſion; which likewiſe ſhews, that what is then done, is confined to that matter only, which is then tranſacting, and not intended to be generally obligatory in other Things.

If the accepting of Preſents, upon occaſion of recommending, or admitting Officers to Places, had been underſtood to be Criminal, in the Eye of the Common Law, or againſt the Statute of 12. *Rich.* 2d; no doubt, but in ſo great a length of Time, Precedents might have been produced, where Perſons had been cenſured, or puniſhed, for a Practice, which has been repreſented to your Lordſhips as the moſt vile, and pernicious Sort of Bribery and Corrup-

Corruption; and yet, notwithſtanding the many marks of the Severity of the Government againſt Bribery and Corruption, which have been taken Notice of, the Gentlemen of the Houſe of Commons have been pleaſed to acknowledge, that there is no Precedent, no Judgment to eſtabliſh and warrant what they aſſert to be Law in this Point.

My Lords, I beg leave to ſay, that a ſtronger Argument than this, can hardly be thought of, to prove that this Behaviour is not illegal: It is a method of reaſoning in our Law, and, I conceive, conſonant to the general reaſon of Mankind; That where a thing never has been done, it is to be ſuppoſed there is no ground or foundation for the doing it. Nor can this way of Reaſoning be avoided, but by ſuppoſing that there never has been any Inſtances of this nature before, or thoſe ſo rare, and private, that the Government had no opportunity of taking notice of them: A Suppoſition, my Lords, ſo extraordinary, that there is hardly room to admit of it: and therefore, when we ſhall, with your Lordſhips Permiſſion, lay before you, Inſtances of this thing having been frequently and openly done; it will not be ſo much, in order to prove the contrary of ſuch a Suppoſition, as to give an opportunity to your Lordſhips, and to intreat you to reflect on the great Abilities, and unqueſtionable Integrity of thoſe excellent Perſons, who have acted in the ſame manner; the Notoriety and Openneſs with which this has been tranſacted, and the perfect Silence of the grand Inquiſitors of the Nation, and the whole Legiſlature in regard thereto: and then to conſider, the clearneſs and force of ſuch a Comment upon the Law, both from the Actions of thoſe, whoſe Characters will not allow of a Suſpicion, that they would act contrary to what they apprehended to be the Law: And from the Silence of thoſe, who ſhould and would, no doubt of it, have taken ſevere Notice of it, if it had been thought to have been ſo.

But ſuppoſe, after all that has been ſaid, that this was ſtill a doubtful point, would it not, my Lords, be extremely hard to rouſe up an old antiquated Law, which for ſo many Centuries has quietly ſlept, without exerting it ſelf, without fixing any Mark, or leaving any Traces of its Force and Vigour, to point out the Danger attending ſuch a Practice; a Practice that has been owned and countenanced by ſuch great and unexceptionable Men, and objected to by none; and which from thence, might well receive the Appearance of being fair and innocent: Would it not, I ſay, my Lords, be very hard, without ſome previous Notice of the Danger, to put this Law in Execution, to unſheath this ruſty Sword, to wound this Noble Earl with? We hope your Lordſhips would think ſo, if it were capable of hurting him, which we humbly apprehend it is not; and that, if there is any doubt remaining with your Lordſhips, as to the Legality of the Earl's Behaviour in this Point, that the Statute of *6th.* of *Edw. 6th.* will clear it up beyond queſtion; and that it will manifeſtly appear by that Statute, that accepting of Preſents is neither *Malum in ſe*, againſt the Common Law, or the Statute of *Richd. 2d.* and that this Statute of *Edw. 6th.* muſt be looked upon as a declarative Law in thoſe Points, or otherwiſe, it muſt be allowed (which none ſure will ſuppoſe) that the Legiſlature of this Kingdom has made a Proviſion to ſanctifie a moral Evil; (for that is the import of *Malum in ſe*) to allow, permit, and even encourage, contrary to the Statute and Common Law, a Practice not only immoral, and vile, but of the moſt pernicious Tendency and Conſequence, if the Repreſentation made of it by the Gentlemen of the Houſe of Commons is to be regarded.

My Lords, I ſhall paſs by the fourth Paragraph of that Statute, whereby it is provided, that the ſaid Act ſhould not extend to Offices of Inheritance: tho', I preſume, the Largeneſs of the Eſtate can hardly be thought to alter the moral Nature of the Action. By the *6th* Paragraph, there is a Saving for all Bargains, Sales, Promiſes, and Agreements, of or for any Office, made before the firſt of *March*; and ſuch Bargains, Sales, and Contracts, are exempted out of the force of that Act. Your Lordſhips will be pleaſed to obſerve, This Seſſion of Parliament began the *23d.* of *January*; ſo that this ſaving Clauſe makes a Proviſion for futurity. My Lords, this would be to eſtabliſh Iniquity by a Law, if the accepting a Preſent on occaſion of admitting a Perſon into an Office, was immoral and criminal, as has been aſſerted. But if it were ſo, and likewiſe againſt the Statute of *12. R. 2d.* and contrary to the ſuppoſed Oath, taken in purſuance of that Statute; what, my Lords, muſt be thought of the laſt Paragraph, which provides, that the Act ſhould not extend to the Chief Juſtices, or Juſtices of Aſſize, that then were, or thereafter ſhould be? Theſe all Annually take the ſame Oath (if it is to paſs as ſuch) upon the ſame occaſion of nominating of Sheriffs, as Mr. *Ayres* has informed your Lordſhips; and are conſequently, by virtue thereof, under the ſame Obligation in this reſpect, as a Lord Chancellor: And can your Lordſhips ſuppoſe that ſo many Reverend and Learned Perſons, who, from their known Duty of Attendance, muſt be preſumed to be preſent in your Lordſhips Houſe, whilſt this Law was there under Conſideration, would have forborn informing their then Lordſhips, how contradictory thoſe Parts of this Statute were to the Common Law, and the Statutes of this Realm, eſpecially that of *Rich.* 2d? Can it poſſibly be conceived, that the whole Legiſlature would paſs a Law, not only to allow, in ſeveral Inſtances, the Practice of what was ſo contrary to the Law of Reaſon, as well as the Common and Statute Law; but even to give a Licence, and Encouragement, to break an Oath preſcribed by Statute, and Annually repeated? And that no Body ſhould ever ſcruple the doing ſo, or diſcover the illegality of this Practice, but upon this unfortunate Occaſion? And yet, my Lords, monſtrous as theſe Suppoſitions are, they muſt (as I humbly conceive) be allowed of, or it muſt be granted that ſuch Acceptance of Preſents is not *Malum in ſe*, or contrary to the Statute of *Rich.* 2d,

2d. And I hope it is plain, that this Statute of *Edw.* 6th, is in effect a declarative Law in those Points.

My Lords, The Gentlemen of the House of Commons seemed sensible of these Difficulties; and therefore they have with great Industry, endeavoured to distinguish what the Earl has done, from the Common and Ordinary way of accepting of Presents, upon such Occasions. They have told your Lordships, that his method was Haggling and Extorsive; and have given it abundance of other hard Names: they have, to confirm it, informed your Lordships, that the Prices lately given, have been higher than those formerly accepted upon the like Occasions: tho' they have not condescended to attempt the Proof of it.

My Lords, As the manner of the Earl's taking of Presents will depend in a great measure upon the Evidence, which has been offered to your Lordships, upon these Articles; I shall beg leave to take some short Notice of it. As to the 9th Article, Mr. *Thomas Bennet* has been pleased to inform your Lordships, that he did desire to have the Earl's Recommendation of Mr. *Hammersley*, to succeed him as Clerk of the Custodies; and that being told at the second meeting with Mr. *Cottingham*, that a Present would be expected, he said it was a very hard and unreasonable Thing to expect a Present from him, who had so lately paid a large Sum, upon his being admitted into his other Office: But upon its being insisted on, that an 100 Guineas should be paid, he was forced to comply therewith, and agree to pay it.

My Lords, I humbly insist upon it, that if an entire Credit were to be given to what Mr. *Bennet* has said upon this Occasion, it would not amount to a Proof of the Charge contained in this Article: The Corruption and Extortion therein complained of, being restrained to the Consideration of permitting and accepting the surrender of the Office there mentioned; all the other Parts of that Article being only introductory to, or in Aggravation of that supposed Offence. But Mr. *Bennet* has not mentioned to your Lordships one Syllable of the Earl's having refused to permit or accept a surrender of that Office, or of his having received any Sum of money in Consideration of his permitting or accepting Mr. *Bennet*'s Surrender thereof.

But, my Lords, we must beg leave to submit it to your Lordships Consideration, what Credit is to be given to Mr. *Bennet*'s Evidence, so far as it does go, for this purpose. The Gentlemen of the House of Commons have thought fit to call Mr. *Cottingham*, as a Witness to this Article; who owns that in his first Discourse with Mr. *Bennet* upon this occasion, he told him, he believed a Present would be expected to the Great Seal, and that Mr. *Bennet* freely offerred 100 Guineas, before Mr. *Cottingham* spoke to the Earl about that Affair. He expresly contradicts Mr. *Bennet* in what he said of Mr. *Cottingham*'s insisting upon 100 Guineas, and Mr. *Bennet*'s Agreement to give that Sum at the second meeting, Mr. *Cottingham* swearing, that the offer of 100 Guineas was voluntary on Mr. *Bennet*'s part; and that it was at their first meeting. There are several other Contradictions in their Evidence; but I shall only take notice of that, where Mr. *Bennet* pretends, that Mr. *Cottingham* asserted he did not know Mr. *Hammersley*, his next door Neighbour. This Mr. *Cottingham* denies, and Mr. *Bennet* is forced in some measure to retract what he had so positively sworn; and comes down to a Belief only, that Mr. *Cottingham* said so, but will not be positive.

It is something surprizing, that after they have done Mr. *Cottingham* the Honour to call him as a Witness, and given him a Credit by so doing, Hints should be flung out, that Mr. *Cottingham* knows no body, except where there is Gold in the Case; that Gold is a great clearer of the Eye-sight, and the like Insinuations, to the lessening his Character. But why then did they call him as a Witness? Surely, my Lords, if he is a Person not to be believed, it was not altogether so proper to produce him as a Witness before this August Assembly. But, my Lords, we shall ease them in that matter, by throughly establishing Mr. *Cottingham*'s Reputation; tho' it is something unusual to support the Reputation of a Witness produced by the other side: And we hope your Lordships will then find no difficulty in determining, whether Mr. *Bennet* or Mr. *Cottingham* deserves most to be credited.

In support of the 5*th* Article, Mr. *Kinaston* is called as a Witness. I shall take no notice of any part of his Evidence, but what relates particularly to the Charge in this Article, the money paid upon his Admittance, and the Circumstances of that Transaction. Mr. *Kinaston* indeed has said, that he would willingly have paid but a 1000 *l.* upon his Admittance; and accordingly offered that Sum, which Mr. *Cottingham* would not hearken to; and therefore he submitted to pay 1500 Guineas; but he owns at the same time, that he has not a very exact Remembrance of what passed upon this occasion. Mr. *Bayley*, to whom Mr. *Kinaston* refers, and who was his Agent in this Business, in his Evidence has given your Lordships an Account, that Mr. *Kinaston*, when he understood that 1500 Guineas was apprehended to be the Present he intended to make, said, that he thought it was only 1500 *l.*; but mentions nothing of the Offer of a 1000 *l.* It is very strange, if that had been the case, that he should not have taken notice of that likewise. But Mr. *Cottingham*, who is again called as a Witness, shews the reason why no notice could be taken of such an Offer; and that is, because there really was none such. He denies that Mr. *Kinaston* offered 1000 *l.* and swears that the Sum offered by Mr. *Kinaston*, was 1500 Guineas, and withal declared, that he would aquiesce under what the Earl should think fit in that matter; and informs your Lordships, upon his being interrogated by the Gentlemen of the House of Commons to that purpose, that he never did acquaint the Earl with what passed upon that occasion, till the whole thing was agreed and settled; and that, when he was informed of it, he expressed himself to be well satisfied therewith. Surely, my Lords, here are no extraordinary Endeavours or Artifices used to enhance the Price; no haggling, by first naming one Sum, then another,

ther; but at once the matter is propoſed, and at once agreed and concluded.

To prove the *6th* Article, my Lords, Mr. *Thomas Bennet* is called again; and here again the like misfortune happens as before; Mr. *Bennet* differs widely from Mr. *Cottingham*, who is called upon the ſame ſide to prove the ſame Article. Mr. *Bennet* ſays, that he acquainted Mr. *Cottingham*, that he thought a 1000 *l.* was enough to give upon his Admittance, and with his Reaſons for ſuch Opinion; but that, however, he was willing to give a 1000 Guineas. Mr. *Cottingham* has Sworn that no ſuch Offer was made, that nothing of that Nature paſſed; but that Mr. *Bennet*, upon being informed what had been done before upon the like occaſions, freely offered fifteen hundred Guineas.

My Lords, The very nature of the Thing, upon the Circumſtances agreed on all Hands, ſpeaks ſtrongly in favour of Mr. *Cottingham*, and in contradiction to Mr. *Bennet*, as to what is aſſerted by each of them upon this occaſion. Your Lordſhips obſerve in what condition the Earl is agreed to be in at that time; had Mr. *Bennet* apprehended that he had ſo very hard terms put upon him, as he would not have your Lordſhips believe he did: Would he not have ſtayed ſome little time, to have ſeen the effect of ſo violent a diſtemper, as a Pleuretic Fever? which his Lordſhip then laboured under in a very high degree; eſpecially when Mr. *Bennet* appeared at the ſame time to be in no very good State of Health himſelf; of which he was reminded by Mr. *Cottingham*, who was ſo far from acting the rapacious part, in behalf of the Great Seal (which was not in a way to ſuffer, by the admiſſion of a Perſon likely to make a new Vacancy by Death) that perceiving Mr. *Bennet* to look yellow, and out of order, he deſired him to conſider what he was going to do, when he took a Place for Life in his Condition. Mr. *Bennet* told him, it was only a Cold; and that therefore he would proceed. This Gentleman, who was ſo cautious, as he pretends, as to the Sum he was to give upon his Admittance, and which he then thought to be ſo unreaſonable, hurries on this Affair, under theſe Circumſtances of his own, as well as the Earl's State of Health; and tho' out of order, as he himſelf owned, preſſes an extorted Sum of 1500 Guineas, into the Hands of, probably, a dying Chancellor. Will not your Lordſhips think it more likely, that Mr. *Bennet* apprehended, that as the Price of Things then went, he might not, under a new Chancellor, come into the Office upon ſo eaſy Terms as were then offered him; rather than that he thought himſelf to be hardly uſed upon that Occaſion? And here, my Lords, I beg leave to take Notice of what has been urged, to induce your Lordſhips to look upon this Acceptance of Preſents, by the Earl in particular, to be Extorſive; which is, that the Sums of money given upon theſe, and the like Occaſions, are lately greatly encreaſed. Your Lordſhips will be pleaſed to obſerve upon what has hitherto appeared, that the Sums taken by the Earl upon the Admiſſion of a Maſter into the Room of one deceaſed, have been conſtantly leſs, than what the Maſters, who have reſigned, have had as a Conſideration for ſo doing. And it is very eaſy to account for the late increaſe of the Sums given upon theſe Occaſions, without any Extortion in the matter. As perſonal Eſtates have vaſtly increaſed within theſe few Years, and Settlements, and Proviſions for Families, have been made out of the Publick Stocks and Funds, the Buſineſs of the Court of *Chancery* hath increaſed proportionably; and conſequently, People would be more deſirous of, and give more money for, the Purchaſe of theſe Offices, which were improved by ſuch increaſe of Buſineſs. And as the common Intereſt of money is grown lower, it is natural to ſuppoſe, that People would be the more ready to inveſt their Fortunes in thoſe Things, which were likely to produce a better Income, even in Proportion to the riſque that was run upon their Lives, than could be made of money in an ordinary way. But whether that, which I have mentioned, or whatever elſe may be the Cauſe of it, it is ſo plain and notorious that all Places and Offices have of late Years increaſed in their Value, that it would be miſpending your Lordſhips Time to enter into the Proof of it.

My Lords, As to the Admiſſion of Mr. *Elde* into his Office, and the Acceptance of a Sum of money upon that Occaſion, which makes up the Charge contained in the 7th Article; and as to ſo much of the 8th Article, as relates to the like Tranſaction with Mr. *Thurſton*; there is not the leaſt Colour or Pretence from the Evidence, which has been given to ſupport thoſe Charges, to ground a Suppoſition of Haggling, or driving a Bargain. On the contrary, from that very Evidence it appears, that what was done by Mr. *Elde*, and Mr. *Thurſton*, was perfectly free and voluntary; and attended with a good deal of Solicitude and Uneaſineſs in the latter, leaſt his Offers ſhould not be accepted; the Circumſtances of which I ſhall not trouble your Lordſhips with repeating. And tho', from the Troubles he has ſince met with in that Office, he has ſomething altered his Opinion of it, your Lordſhips will be guided by what he then thought, and acted. Your Lordſhips will be pleaſed to obſerve from the ſame Evidence, that great part of the money preſented by thoſe Gentlemen, has been returned to them again; and tho' it is ſome time afterwards before it was done, it was plain, there was a much earlier Intention of doing ſo. Mr. *Elde* has informed your Lordſhips, that in *May* following his Admiſſion the Earl intimated to him, that he would return part of the money: And Mr. *Thurſton* received ſeveral Meſſages, which plainly appeared to be in order to a Return of part of the money which he had given; tho', on Occaſion of his being out of Town, it was ſome time after before he knew the meaning thereof, or had the money returned.

My Lords, There is one particular Circumſtance in the 8th Article, which has taken up a great deal of your Time; that I mean of the Deficiency in Mr. *Borret*'s Office. Why that matter was inſerted there, and why it has been ſo much laboured, and your Lordſhips troubled with ſo much Proof about it, I muſt own myſelf at a Loſs to conceive; unleſs it be allowed and admitted, that the taking of money, upon the Admiſſion of a Perſon to the Office of one of the Maſters of the Court of *Chancery*, is not purely and ſimply *Malum in ſe*, illegal, and contrary to the Statute of *Rich.* 2d: But that, if it be done to raiſe money to make good the deficiency in the Office, as was done in the Caſe of Mr. *Edwards*, which your Lordſhips have upon this Occaſion heard of, it is right and well. How otherwiſe can the Deficiency in the Office be an Aggravation of the ſuppoſed Crime of taking a Preſent upon the Admittance of a Perſon into it? Is it unreaſonable to admit a new Maſter into an Office wherein there is a deficiency? Is it not as neceſſary to fill up that Vacancy as any other?

Certainly more ſo, in order to have one, whoſe Duty obliges him to a more particular Care of the Affairs thereof, which ſeem more to want it. The Aggravation then of the Fault, or rather the Fault itſelf, muſt conſiſt in the not applying the money received, towards the diſcharge of the deficiency. But how can it be a Fault not to do ſo, unleſs there had been an Obligation ſo to have applied it? And how can there be an Obligation to make ſuch Application of the money, where there is ſo ſtrong an Obligation, as has been inſiſted on, not to raiſe any money at all by ſuch means? My Lords, we humbly apprehend, that the endeavour to aggravate what is charged as a Crime in this Article, has weakned, at leaſt, what is laid as the Foundation for its being a Crime; and this with little or no Succeſs in the Proof, attempted to be made of this matter; ſo far, I mean, as relates to the Earl's Knowledge of the Deficiency, or his want of Care to be informed of the State of that Office.

I won't repeat what Mr. *Godfrey* has ſaid upon this Occaſion; your Lordſhips perceive that he and Mr. *John Bennet* were thought the fitteſt Perſons to inſpect the Affairs of Mr. *Borret*, after his deceaſe; and were accordingly appointed to do ſo: And upon having examined Things, as well as they then could, were both of Opinion, as Mr. *Godfrey* ſays, that there was no Likelihood that there would be any Deficiency; and with this the Earl was acquainted. Mr. *Bennet* indeed, differs ſomething from Mr. *Godfrey*, as to the Account which he gave of this matter; but not ſo much, tho' his Account was to be taken, as would anſwer the Purpoſe for which he was called; the aggravating the Charge in this Article againſt the noble Earl, who, there is no Room to doubt, would have acted as generouſly in this Caſe, as he did in the Caſe of Mr. *Edwards*, upon his coming into *Dormer*'s Office, if the Circumſtances, as repreſented to him, had been in any near degree alike.

My Lords, I have thus ſtated the matter of theſe ſeveral Articles, to the beſt of my Remembrance, in its true Light, as it ſtands upon the Evidence already given: We ſhall beg leave to call ſome Witneſſes to prove, that ſeveral noble and great Perſons have taken Preſents upon theſe Occaſions: Men of excellent Characters, ſome of whom ſeveral of the Gentlemen of the Houſe of Commons have taken ſuch Notice of, that I may ſafely venture to ſay, that they will concur in the Opinion, that they were Perſons of ſo much Integrity, that they would not have taken ſuch Preſents, if they had thought it illegal ſo to have done; and of ſo great Abilities, that their Judgment muſt be of the greateſt weight in this Point. We ſhall further trouble your Lordſhips to explain the nature of the Payment of 64 *l.* which Mr. *Thomas Bennet* told your Lordſhips he made, over and above the 100 Guineas, paid by him on Account of the Office of Clerk of the Cuſtodies. He might, no doubt, if he had pleaſed, have informed your Lordſhips, that the moſt part of this 64 *l.* was either paid to the Clerks of the Office, or belonging to other Officers, and that not above 33 *s.* came to the Great Seal; and we apprehend that to have done ſo, would have been more agreeable to the Sincerity, with which a Witneſs ought to ſpeak, than to have left it in that general manner, where it might look like another Payment to the Earl. And I hope your Lordſhips will excuſe my obſerving upon this Occaſion, the unhappy Circumſtances of the noble Earl at the Bar: If he takes a ſmall Sum, as this of the 100 Guineas for Inſtance, it is poor, pitiful, and a Proſtitution of his Honour; if a larger Sum is taken, he is avaricious, greedy, rapacious, and I don't know what: Tho' your Lordſhips will obſerve, the Sums accepted are regulated according to the Nature of the Office, on Account of which they are given. My Lords, his very Care in other Inſtances is made his Fault, his Actions muſt be all ſuppoſed to be done with corrupt Views; and yet his not Acting is equally blamed; it is Careleſneſs, and Neglect. This is the Light in which his whole Behaviour has been ſet before your Lordſhips, and that with all the Aggravations and Vehemence imaginable. But it is your Lordſhips, who, in a ſuperior and calmer Station, are to weigh and judge of theſe matters. It is from you the noble Earl is to expect Judgment; and it is his Happineſs, that it is ſo. And in order thereto, when we have laid this Evidence before your Lordſhips, together with an Order, which ſhews the Payment of the moneys received from Mr. *Thomas Bennet* and Mr. *Kinaſton*, into the Court of *Chancery*; we ſhall ſubmit the matter of theſe Articles to your Lordſhips. And notwithſtanding all the ſevere Things which have been ſaid upon this Occaſion, we humbly hope your Lordſhips will be of Opinion, that the noble Earl at your Lordſhips Bar, is not guilty of any of the Charges contained in theſe Articles.

Mr. Serj. *Probyn*. My Lords, we now proceed to call our Witneſſes, and to prove the ſeveral Facts we have opened; and we beg leave to proceed in the ſame method as the Gentlemen, who are the Managers for the Houſe of Commons, have done. As they began with the 9th Article, ſo we in our Evidence ſhall likewiſe begin there; and ſhow that Preſents have conſtantly been made to the Great Seal upon all Admiſſions into the Office of the Clerk of the Cuſtodies; and that in many other Offices under the Direction of the Great Seal, Preſents have been uſually made by the reſpective Officers on their Admiſſions; and this hath been the known uninterrupted Uſage; and every Chancellor hath taken them as cuſtomary Preſents. We deſire, in the firſt place, that Mr. *Roger Lewis* may be called.

Mr. *Roger Lewis* ſworn.

Mr. Serj. *Probyn*. We deſire he may be asked, how long he hath been concerned as a Deputy in the Office of the Clerk of the Cuſtodies?

Mr. *Lewis*. I have aſſiſted as Clerk of the Cuſtodies of Lunaticks and Idiots, for the ſpace of about 35 Years.

Mr. Serj. *Probyn*. I deſire he may be asked, who was the firſt that came into the Office of Clerk of the Cuſtodies in his Remembrance?

Mr. *Lewis*. Mr. *Henry Wynne* was the firſt that came in after I was Clerk there.

Mr. Serj. *Probyn*. Who ſucceeded Mr. *Wynne*?

Mr. *Lewis*. Mr. *Roger Thompſon*?

Mr. Serj. *Probyn*. I deſire he may be asked, whether Mr. *Thompſon* be now living or dead?

Mr. *Lewis*. Mr. *Thompſon*, as I have been informed, hath been dead about theſe 9 or 10 Years paſt.

Mr. Serj. *Probyn*. I deſire he may be asked, whether any Preſent or Compliment was made to the Great Seal on Mr. *Thompſon*'s Admiſſion?

Mr. *Plummer*. My Lords, I object to the Anſwering of that Queſtion; and deſire to know, whether your Lordſhips will have Evidence againſt Gentlemen that are dead, who are no way capable of Anſwering for themſelves before your Lordſhips here? If my Lord can ſhew any Title or Right he had to ſell this Place, we are ready to hear him; but to give Evidence againſt a Perſon that is dead, and cannot ſpeak for himſelf; I ſubmit that to your Lordſhips.

Mr. *Lutwyche.* My Lords, this matter is very proper to be objected to now, and it is very neceſſary for your Lordſhips Determination in the Beginning of this Affair. I ſee by this Queſtion, and their Opening, what large Compaſs the Gentlemen have taken, not only as to theſe Offices, but as to many other Offices Preſents were given. I take the proper Queſtion before your Lordſhips to be, Whether this be lawful by the Laws and Statutes of the Realm? and if that be the Queſtion, I ſubmit it whether it is material to give an Account what other Perſons have done? Whether, when a Perſon is brought upon a Proſecution for an Offence againſt the Law, it be material for him to ſay, that other Perſons have been guilty of the ſame Crimes? This is a Queſtion at Law upon the Conſtruction of the Statute; and they ſay it is neceſſary for them to give theſe Inſtances, to ſhew the Judgment of thoſe great Perſons upon the Act of Parliament; but ſure I am, it was never yet attempted to give in Evidence the Actions of other Perſons in order to expound a Statute. The Expoſition of a Statute muſt be founded on the Words of the Law, and not on the Actions of other Perſons. In all the Experience I have had in caſes of Proſecutions for Crimes founded on the Common Law, or on Acts of Parliament, Gentlemen argue from what the Law is, what Authorities have been in thoſe Caſes, and what the Conſtruction hath been in former Judgments. My Lords, this is a matter of great Conſideration to your Lordſhips, not only upon the Account of the Precedent, but alſo upon the Account of the Time that your Lordſhips are like to ſpend, if you are to go through all the Offices of the Law, to ſhew how many great men have accepted Preſents. It will take up a great deal of Time, without any Fruit at all. But, my Lords, there are other Conſiderations which will prove it unreaſonable to admit of this Evidence: At preſent your Lordſhips have under your Conſideration the Caſe of this noble Lord within your Bar; but would they in Defence of him impeach others, not here to defend themſelves? Many of them are dead, others are living: Will you try Perſons not accuſed, and without being preſent to anſwer for themſelves? But, my Lords, with reſpect to our ſelves, is it reaſonable for us to take upon us the Examination of ſeveral Facts, without knowing who the Perſons charged are, what the Circumſtances of the Caſe were? Are we to ſhew the Difference, or ſtate the Circumſtances? It is impoſſible for us to do it. My Lords, this being the Nature of the Caſe, it is a matter for your Lordſhips Judgment, now in the Beginning, that your Lordſhips may ſee the Extenſiveneſs of the Evidence they have hinted at, and intend to produce. That which we inſiſt upon is two things, that it is not material, and that there is no manner of Notice for the Perſons ſo charged to make any Defence, or to ſhew how the Circumſtances of the Caſe were. So, my Lords, we muſt beg leave to have your Lordſhips Judgment in this matter.

Mr. *Sol. Gen.* My Lords, if the noble Lord produceth any one to make out his Innocence, we do not oppoſe it. But if the noble Lord endeavours to ſhew what the Law is from the Practice of other People, it is altogether improper. It is impoſſible that the Law can be judged of by the Practice of other People in committing the ſame Facts. That can't have the Weight of the Opinion of a great Man. The Opinion of a learned Perſon, not concern'd in the Queſtion, is an Opinion of weight; but the Opinion of a Perſon concerned in the Queſtion, is not to be look'd upon as of any Authority. If the noble Lord makes Uſe of this Kind of Evidence, by way of mitigation, or of leſſening his Offence, in that View it can be of no Significancy: Becauſe the Aggravation or mitigation of the noble Lord's Offence muſt ariſe from the particular Circumſtances, Manner, and Facts of his Offence. We muſt ſubmit it therefore to your Lordſhips Conſideration, whether this is a proper Inquiry or no.

Mr. Serj. *Probyn.* My Lords, we beg leave to inſiſt upon it, that this is a proper Queſtion, and very material for the noble Earl's Defence. He hath inſiſted in his Anſwer, 'That what is objected to him in this Inſtance, hath been long uſed and practiſed in the Time of his Predeceſſors; and that ſuch Preſents have been reckoned among the ancient and known Perquiſites of the Great Seal; and the making and accepting thereof hath been notorious to all the World, and never before looked upon to be criminal, or complained of as ſuch; and that he humbly hopes, that the giving or receiving of a Preſent on ſuch an Occaſion, is neither criminal in it ſelf, nor by the Common Law of this Realm; and that there is not any Act of Parliament, by which the ſame is ſubjected to any Puniſhment or Judgment, which can be prayed in this Proſecution; and the ſaid Earl further hath ſaid, that he thinks himſelf obliged humbly to lay this before your Lordſhips, not only in his own Defence, but in Vindication of the Honour of ſo many great and excellent men, who have been his Predeceſſors in the ſame Office, and have all along done the ſame, for which he is now complained of; and alſo of others, who have been Lord Chief Juſtices of the King's Bench, and Common-Pleas, Maſters of the Rolls, and Judges, who have likewiſe received Preſents in money, upon the Admiſſion of the ſeveral Offices under them in the reſpective Courts of Juſtice wherein they preſided; and who, the ſaid Earl is aſſured, never apprehended themſelves to be guilty of any Crime againſt any the good and wholeſome Laws or Statutes of this Realm: And therefore we take it to be our Duty to give proper Evidence to ſupport this Part of the noble Earl's Anſwer. But, my Lords, it is objected by the Gentlemen that are Managers for the Houſe of Commons, that they are not prepared to enter into this Proof, becauſe they had no Notice that ſuch Evidence would be given: In Anſwer to which we humbly ſubmit it, that the Anſwer the noble Lord hath given, that ſeveral preſiding Officers in the Courts of Law and Equity have always received ſuch Preſents, is ſufficient Notice to them to be prepared to anſwer ſuch Evidence as might be offer'd to ſupport this Allegation. My Lords, as to the other Objection, that the Opinions of great men are not Evidence in their own Caſes, we ſubmit it that in this Caſe it is a material Circumſtance. Though the Precedents of great men, (whoſe Names they are unwilling to hear) who have taken Preſents in like Caſes, and not thought it criminal, may not controul your Lordſhips Judgment in this Particular, yet I humbly apprehend that ſuch Inſtances cannot but have great weight in the Event of this Caſe. They are material Circumſtances, ſtrong Inducements to incline your Lordſhips to believe, that this noble Lord had

had no avaritious, no corrupt Deſign, in accepting the common cuſtomary Preſents that were voluntarily tendred to him. And ſince it is made ſo material a Part of his Defence, and that he might well think himſelf innocent and ſecure in following the Examples of ſo many honourable and learned Perſons, of which we are prepared to give your Lordſhips many Inſtances in Evidence; and ſince they have Notice of it, and that the noble Lord hath inſiſted upon it in his Anſwer, we humbly beg your Lordſhips will admit us to give the ſeveral Inſtances in Evidence.

Mr. *Com. Serj.* My Lords, I beg your Lordſhips Patience. My Lords, we humbly apprehend this is very proper and regular Evidence. I think there can be no Evidence more proper. If the noble Lord ſhould have the Misfortune to be thought culpable, will he not appear under another View to your Lordſhips, when he hath had the Concurrence of ſeveral great Perſons, of whoſe Integrity, Honour, and Knowledge, no Queſtion hath ever been made? If he himſelf hath introduced this Practice, and ſet it up by himſelf, it will then moſt certainly be an Aggravation; if he hath done no more than others have done, it will be an Extenuation. My Lords, taking it in that Light, there is no Reaſon why this Evidence ſhould not be given. But, I hope, your Lordſhips will further conſider of the preſent Caſe: Here is a Law inſiſted upon of ſeveral Hundred Years ſtanding, that makes this Criminal: It is owned that there hath been no Determination or Judgment at Law, that this is Criminal: Practice, eſpecially in Reſpect of old Statutes, hath oftentimes been allowed and admitted to explain the Senſe and meaning of thoſe Statutes. There are no Records preſerved of this, and therefore we are under a Neceſſity to confine our ſelves to ſuch Evidence as we can produce of living Witneſſes, and therein we apprehend we are proper, as it is Part of the matter in Iſſue before your Lordſhips. Your Lordſhips are as well to try the Earl's Anſwer, as the Common's Articles. Another Circumſtance they are pleas'd to mention againſt receiving this Evidence, is, the taking up of your Lordſhips Time. Your Lordſhips have had the Goodneſs and Juſtice to hear, with great Patience, a very long Evidence, with repeated Obſervations and Openings of the Articles, in order to prove a noble Peer, one of your own Body, to be Guilty: Can it be ſuppoſed that your Lordſhips will not have that Patience, which is due to all People in Favour of Innocence, and when one of your own Body ſtands impeached? For theſe Reaſons we humbly hope that this Evidence ſhall be admitted; and that the noble Earl ſhall have the Benefit of this Explanation, what the Senſe of ſo many great and excellent men hath been of this old and doubtful Statute.

Mr. *Robins.* My Lords, we apprehend your Lordſhips will not be of Opinion, that this will be to defend the preſent Impeachment, by the Impeaching of others. We lay it down as the Foundation of our acting, that our Predeceſſors have done the ſame, notwithſtanding this Statute of *Edward* the *6th.* and therefore it is a reaſonable Inference, that this was not taken to be within the ſaid Statute. We apprehend it cannot reflect upon any that are either Dead or Living; and that, as we are in Defence of this noble Lord, we are at Liberty to examine Witneſſes, to prove that other Perſons, his Predeceſſors, have done the ſame.

Mr. *Strange.* My Lords, I apprehend we have the ſame Right to juſtify our ſelves by Precedents, as they have to accuſe us by Precedents. What the noble Earl's Predeceſſors in other Inſtances have done, hath been mentioned by Way of Aggravation. The Caſe of Dr. *Eddisbury* hath been mentioned over and over by the Gentlemen of the Houſe of Commons; and they have aggravated the Offence of the noble Earl, for not following that Precedent; and as they had a Right to aggravate the Earl's Offence, by not following the Precedents of his Predeceſſors, ſo we think we have the ſame Right to ſhew in other Inſtances, that we have followed the Examples which have been ſet us by our Predeceſſors. But they ſay, this is againſt Law: Whether that is ſo, or not, is the Queſtion; and it will be material for the Deciſion of that Queſtion, to take into your Conſideration, what hath been the Opinion of great Men in all Ages, upon this Act of Parliament. Continual Uſage, from Time to Time, even from the making of the Act of Parliament, is the beſt Expoſition of that Law. Contemporary Uſage, or the Opinion of thoſe, who were at the Time of the making of a Law, hath always been eſteemed the beſt Interpretation of that Law; and therefore, as we ſhew the Uſage to be conformable to what we now inſiſt upon, I humbly hope it will have a great Influence upon your Lordſhips, as to the Expoſition to be now put upon this Act of Parliament: It hath been ſaid, This Way of Proceeding tends to accuſe great Perſons of Honour, *&c.* ſome that are Dead, and ſome that are now Living; we ſhall not enter into ſo nice a Debate: it is ſufficient for us that it is proper and neceſſary Evidence for the Defence of our Client. It is a material Evidence in this Caſe, whether other Perſons have diſpoſed of theſe Offices, and have incurred any Penalty; if they have done it, I humbly apprehend that no Objection remains againſt our entring into the Evidence of that Kind. Whatever is your Lordſhips Judgment in Point of Law, it is material for your Lordſhips Conſideration, whether this noble Lord hath ſet this on foot of his own Accord, or hath not trod in the Paths of his noble Predeceſſors? Your Lordſhips will take it into your Conſideration, and whatever the Point of Law may happen to be, it muſt be ſaid, that if this noble Lord did err, he erred with his Predeceſſors.

Earl of *Macclesfield.* My Lords, I would not trouble your Lordſhips, if I did not think it neceſſary to inſiſt upon your Lordſhips admitting this Evidence: Indeed, if I thought it would impeach the Character or Reputation of any of the noble Lords, who have been my Predeceſſors, whether they be now dead or alive, I would undergo any Puniſhment rather than do it. But I hope it was innocent, both in them and me; and that its being done by Perſons of ſuch unblemiſhed Honour, will be one ſtrong Argument of its being ſo; and, my Lords, I proteſt their Example was the ſingle Reaſon with me for doing of it; and if it had not been done before, I would not have done it: This was the true Ground of what I have done. For what theſe Gentlemen ſay, my Lords, that this is not material, and that the Law muſt be proved by Law Books and Judgments, I thought the Common

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Law was common Uſage, and that which hath conſtantly and openly been done without being cenſured or blamed, cannot be contrary to Common Law. If this be not allowed, I am highly obliged to theſe Gentlemen, that they have not accuſed me for taking Money in many other Inſtances, relating to my Office; to inſtance in one only, upon the paſſing of every Patent there is a ſmall Fee due, and conſtantly paid to the Great Seal; if they had accuſed me of this, and called it criminal, I know not what to have ſaid to it, unleſs Uſage and Cuſtom had juſtified it; I claim it as a Right, and unleſs Uſage will prove the Right, I know no other Way. I own this is ſomething different: In that Caſe, I inſiſt on a particular Sum by Uſage: I do not inſiſt in this Caſe that there is a particular Sum due as a Fee, but that I had a Right, or Liberty, to accept of ſuch a Sum as the Party ſhould give: But, ſay the Gentlemen, this Evidence is to make other Perſons Criminal; That is very true, if this be a Crime. Theſe Gentlemen take it for granted; but whether it be a Crime or no, will be for your Lordſhips final Determination: And I hope your Lordſhips will not be of Opinion, that it is a Crime. If it ſhould come out to be in your Lordſhips Judgment a Crime, it will be a great Cenſure upon my Predeceſſors, who all, as it is well known by every Body, did the ſame Thing. But if this be underſtood to be a Matter, that is admitted to have been practiſed, and to need no formal Proof, I had rather let this Examination alone: It is uneaſy to me, to enter upon any thing that can draw a Reflection upon any Perſon: therefore I ſubmit it to your Lordſhips.

Mr. Serj. *Fengelly*. My Lords, The Managers are accountable to the Commons for any Thing they admit without their Direction; therefore, unleſs they are ſatisfied and convinced that they ought to admit it, it is not to be expected for the Managers to do it. It is ſaid, that the Things offered are in Extenuation; that it would be a greater Guilt, if there were not former Examples to juſtify it: I apprehend for that Reaſon it is an improper Time to inſiſt upon this now: Becauſe Matters of Aggravation or Extenuation muſt come ſubſequent to your Lordſhips Determination on the Articles, and will be the Conſideration of your Lordſhips, when you come to conſider of the Judgment that is to be given. I have known by frequent Experience, in Proſecutions of a Criminal Nature, that where the Defendant hath been convicted, he hath been allowed to lay Circumſtances before the Court in Mitigation of the Puniſhment: And if, hereafter, this comes to be conſidered of in this Manner, the Managers will have an Opportunity to give a proper Anſwer thereto. If in this Anſwer he had inſiſted on it as an eſtabliſhed Fee ſupported by Cuſtom, and had claimed it as of Right, it had been proper to have examined Witneſſes in Support of that; but when he inſiſts upon it as a Matter of Diſcretion, and of Explanation of an Act of Parliament, we cannot admit it. It is not proper to give in Evidence that, which doth not make good the Defence in Anſwer to the Articles. We cannot admit a Thing of this Nature, which may be attended with great Inconveniencies. We do not know what may be grafted on ſuch an Admiſſion; therefore we beg Leave to ſubmit it to your Lordſhips Determination.

Mr. *Lutwyche*. My Lords, It is ſaid very roundly, That this is an old doubtful Statute, and therefore you ought not to take Notice of it. As to the Doubtfulneſs of it, I believe it is too plain; as to the Obſoleteneſs of it, it is a Statute that is read every Year in the Court of Exchequer. And therefore whatever Doubts may be of this Matter at the Common Law, yet this Statute makes it plain. And I deſire the Councel for the Noble Lord to tell us, where any Statute is more plain and poſitive; and wherein they have ſhewn the leaſt Doubtfulneſs in the World, but rather object that it hath gone too far. Doth any Judge, in Point of Evidence, on an Indictment for Breach of a Statute-Law, permit Perſons to give Evidence, that others have been guilty of the ſame Facts, and that therefore it is no Breach of the Law? Suppoſe this is to be conſidered as doubtful, on Conſtruction of the Statute, what then is the common ordinary Method? It is well known, that the Jury find the Fact ſpecially, and it is referred to the Court for their Opinion on the Law. My Lords, give me Leave to mention how this Matter is; here is an Act of Parliament, a general Act, the Judges are to take Notice of it, it is plain and poſitive. The Councel make a Doubt on the Conſtruction of this Statute; it is inſiſted upon that other People have done it, and have not been puniſhed; and would ſuch a thing be ever permitted to be found by a Jury, or would any Regard be had to it if found? I apprehend the noble Lord, who hath been a great Maſter of Evidence in his Time, would not have permitted it to be done: they have ſhewn no Precedent for it: In its own Nature it is unreaſonable. Are we to examine into the particular Manner and Circumſtances of every particular Caſe of the ſeveral Perſons that are now either Dead or Living? It is unreaſonable, it is unprecedented, to offer ſuch Evidence; and I hope your Lordſhips will not admit of it.

Mr. *Plummer*. My Lords, the Councel for the noble Lord take that for granted which we deny. The admitting theſe Witneſſes to be examined, is admitting that it is not a Crime. Reputation is of great Value, and great Care ought to be taken of it; and we are willing to take Care of the Reputation of the noble Lord's Predeceſſors. I am not a Lawyer, but I never heard that that was not a Crime, which an Act of Parliament ſays is ſo. And that this is a Crime, I beg Leave to remind your Lordſhips, that he himſelf declared ſo to the

Maſters in Chancery, that they had bought their Places againſt Law. I take that to be a fair Confeſſion that his Opinion was, that it was a Crime.

Lord *Lechmere*. Before the Councel withdraw, I would have this Queſtion explained to me by the Councel of the noble Lord, whether this Practice be inſiſted on as a Proof of a Right in the Great Seal to take this as a Perquiſite, or whether it be offered as an Extenuation?

Mr. Serj. *Probyn*. My Lords, we inſiſt upon it in both Reſpects.

Then the Managers and Councel were order'd to withdraw; and after ſome Time, being called in again,

Lord Chief Juſt. *King*. Mr. Serjeant *Probyn*, It is their Lordſhips Judgment that you are at Liberty to proceed in your Evidence, as you were going on.

Mr. Serj. *Probyn*. My Lords, we deſire Mr. *Roger Lewis* may be called again.

Mr. *Lewis* called.

Mr. Serj. *Probyn*. My Lords, I deſire this Witneſs may be asked, how long he hath been a Deputy in the Office of the Clerk of the Cuſtodies?

Mr. *Lewis*. About five and thirty Years.

Mr. Serj. *Probyn*. Who was then in the Office?

Mr. *Lewis*. Mr. *Henry Wynne*.

Mr. Serj. *Probyn*. How long did he continue in that Office?

Mr. *Lewis*. About Twelve Months.

Mr. Serj. *Probyn*. Do you know who ſucceeded him?

Mr. *Lewis*. Mr. *Roger Thompſon*.

Mr. Serj. *Probyn*. My Lords, I deſire he may be asked, whether any Preſent was made by Mr. *Thompſon*, on his Admiſſion into the Office?

Mr. *Lewis*. I do not know of any Preſent made by Mr. *Thompſon*.

Mr. Serj. *Probyn*. By Mr. *Wynne*, or Mr. *Thompſon?*

Mr. *Lewis*. No; but Mr. *Wynne* told me ——

Mr. Serj. *Probyn*. Is Mr. *Wynne* living or dead?

Mr. *Lewis*. He is Dead.

Mr. Serj. *Pengelly*. My Lords, we beg Leave to object to this, what a particular Perſon told him is not Evidence, we hope this ſhall not be admitted.

Mr. *Lutwyche*. They know this was never allowed.

Mr. Serj. *Probyn*. If the Man be living, the Objection is good, but now he is dead, we hope it may be allowed.

Mr. Com. *Serj*. The Gentlemen object, that we are not at Liberty to ask what hath been declared concerning that Matter by a Perſon that is now dead; we humbly apprehend it is within the Rule of Evidence, and I muſt appeal to the Memory of your Lordſhips, whether it is not good Part of the Evidence that hath been given by the Managers.

Earl of *Macclesfield*. My Lords, what we are giving Evidence of, is of a Thing tranſacted thirty five Years ago; the Parties are all dead: he is about to give you an Account of what he did, and was ſaid to him at that Time by his Maſter, in his tranſacting that Affair. If the Perſon that ſaid it were now alive, to be examined to it himſelf before your Lordſhips, it would not be Evidence without examining him; but if dead, what he ſaid concerning this Fact may be given in Evidence, it is concerning the Party's own Act, and what he told him at the Time it was doing. Therefore we hope they will not oppoſe this Evidence, which in the Nature of the Thing is all that poſſibly can be now given.

Mr. Soll. General. My Lords, I hope this is what your Lordſhips will not ſuffer to be done. I never knew the Sayings of a dead Man given in Evidence to prove a particular Fact: They have been only admitted in Proof of general Uſages and Cuſtoms; but as for a particular Fact, lying in the Knowledge of a particular Perſon, by his Death you have loſt your Evidence.

Earl of *Macclesfield*. My Lords, if they will inſiſt upon it, we muſt withdraw.

Mr. *Plummer*. This Man here is upon his Oath; but the Evidence that he muſt give of the Saying of another, muſt be of a Saying not upon Oath.

Lord *Trevor*. If there be a Difference in Opinion between the noble Lord and the Managers, they muſt withdraw. But I don't ſee any Reaſon to withdraw. I will tell my Opinion, that ſuch an hearſay Evidence is no Evidence.

Mr. Com. Serj. I deſire he may inform your Lordſhips, whether he knows any Thing as to the Tranſaction of his own Knowledge?

Mr. *Lewis*. I know that Mr. *Wynne*, whether he had ſurrendred, or was going to ſurrender, I don't remember, but he told me ——

Mr. Serj. *Pengelly*. My Lords, they are going on again in the ſame Way.

Mr. Serj. *Probyn*. Do you know any Thing of your own Knowledge?

Mr. *Lewis*. I had Money in my Hands of Mr. *Wynne*'s. He told me ——

Mr. Serj. *Pengelly*. Evidence of this Sort is by your Lordſhips Judgment not to be permitted.

Mr. Serj. *Probyn*. He informs your Lordſhips, that he hath known this Office thirty five Years. Now, I deſire that he may declare what hath been the Uſage on Surrenders and Admittances into this Office of Clerk of the Cuſtodies, whether any Preſent, or Gratuity, hath been made to the great Seal?

Mr. Serj. *Pengelly*. This is the ſame Thing again.

Mr. Soll. General. If Gentlemen put this general Queſtion with no other View but to draw out what your Lordſhips have determined to be no Evidence, we muſt oppoſe it. It is a plain Queſtion, Whether he knows of his own Knowledge that any Money was given? And we deſire he may be confined to his own Knowledge.

Earl of *Macclesfield*. The Gentlemen ſay, that as to Matters of Uſage, it is uſual to enquire what old Men have ſaid and declared. I apprehend this is a Matter of Uſage we are now

how inquiring after; but if your Lordſhips are of Opinion that this ſhould not be asked, I believe he doth not know any Thing of his own Knowledge of the Money being actually paid to the great Seal.

Mr. Serj. *Probyn*. My Lords, we deſire that Mr. *William Oaker* may be called.

Mr. *Oaker* ſworn.

Mr. Serj. *Probyn*. My Lords, we deſire that Mr. *Oaker* may be asked whether he knows of any Demand, or Claim, made upon the Admiſſion, or Surrender, of the Clerk of the Cuſtodies, and by whom?

Mr. Serj. *Pengelly*. My Lords, this Queſtion is contrived in an odd Manner. The Queſtion muſt ariſe upon the Fact, not antecedent to the Fact. The Queſtion of any Claim before, ſhould be whether he knows of any Money paid, and in what Manner?

Earl of *Macclesfield*. It is the ſtronger, if it is claimed and paid: But I apprehend, if it were only claimed, it is Evidence.

Mr. *Oaker*. I don't well underſtand the Queſtion as it is put, but I remember in my Lord *Cowper*'s firſt Time, in the Year 1710, that Office was transferred from Mr. *Thompſon* to Mr. *Edwards*; I was then Secretary of the Lunaticks, and I remember I inquired of one or both of thoſe Gentlemen, if any Preſent was made to my Lord on that Occaſion, and was anſwered, that nothing had been uſually given in the Caſe of that Office, and that they had ſatisfied my Lord thereof. Afterwards, when my Lord *Cowper* had the great Seal again, and I was again Secretary of the Lunaticks, his Lordſhip was pleaſed to obſerve to me, that he had ſuffer'd himſelf to be impoſed upon in ſeveral Matters, when he had the Seal before, and inſtanced particularly in the Affair of transferring the Office of Clerk of the Cuſtodies; and ſaid he was very well ſatisfied thoſe Gentlemen had impoſed upon him, by aſſuring him that nothing had uſually been given on transferring that Office; for he was well aſſured there had been Preſents on that Occaſion, and did not ſee any Reaſon why there ſhould not: And his Lordſhip ordered me to enquire, as particularly as I could, what had been given, and by whom, that he might know what to do if a Thing of that Kind ſhould happen again.

Mr. *Plummer*. My Lords, I believe this Gentleman was Servant to my Lord *Cowper*, when he was Chancellor laſt; I deſire to know if any Vacancy of this Office happen'd in the laſt Time that he was Chancellor.

Mr. *Oaker*. There was a Vacancy in the laſt Time. I don't know what Sum of Money was given for it?

Mr. *Plummer*. My Lords, I deſire this Witneſs may be asked, if he ever knew that my Lord *Cowper* did take any Thing for the Surrender of this Place?

Mr. *Oaker*. I don't know, I believe he had nothing the firſt Time, but he thought himſelf impoſed upon in it, and bid me inquire about it. As to the ſecond Time, I never could inform my ſelf what was done in it.

Lord *Lechmere*. I deſire he may be asked, Who it was that ſurrendred this Place of Clerk of the Cuſtodies, and to whom? Name them.

Mr. *Oaker*. The firſt was Mr. *Thompſon*, who ſurrendred to Mr. *Edwards*, he ſurrendred to Mr. *John Bennet*, and Mr. *John Bennet* ſurrendred to Mr. *Thomas Bennet*.

Mr. *Onſlow*. My Lords, I deſire before Mr. *Oaker* goes, that he may explain himſelf which of thoſe two Times it was that my Lord *Cowper* ſaid he was impoſed upon?

Mr. *Oaker*. It was the firſt Time.

Mr. *Onſlow*. I deſire to know if he took any Thing at either Time?

Mr. *Oaker*. I don't know, otherwiſe than as I have before declared.

Mr. Serj. *Probyn*. My Lords, we deſire that Mr. *Edward Dupper* may be called.

Mr. *Dupper* ſworn.

Mr. Serj. *Probyn*. My Lords, I deſire that Mr. *Dupper* may be asked, whether he knows of any Sum of Money that hath been paid, or received on the Surrender, or Admiſſion, of any Clerk of the Cuſtodies?

Mr. *Dupper*. I did not ſee any Money paid. I did give my Lord *Macclesfield* an Account that there had been 250 Guineas paid upon a former Surrender of that Office before this Mr. *Hammerſley* was admitted.

Mr. Serj. *Probyn*. From whom had you that Information?

Mr. *Dupper*. My Lords, I don't know how far I may be permitted to name that Perſon's Name.

Many Lords. Name him.

Earl of *Macclesfield*. Was it from one that had the Cuſtody of the great Seal?

Mr. *Dupper*. Yes, my Lords.

Lord ——— Who was it from?

Mr. *Dupper*. I had it from my Lord *Harcourt*. My Lords, I cannot ſay I ſaw the money actually paid; neither can I ſay, that his Lordſhip received this money. But I was a Servant to my Lord *Harcourt*, and his Lordſhip kept an Account of the Profits of the Office of Lord High Chancellor in his Time, in his own Writing; and I made two Copies of that Account in a large hand-writing for his Lordſhip's Uſe; and I generally made two Copies of each, for fear one ſhould be loſt or miſlaid when wanted. One of theſe Copies I kept by me, which I have here; in it is an account of the yearly Profits of that Office, and there is this particular; *Item*, of 250 Guineas received for the Surrender of the Office of Clerk of the Cuſtodies, which I copied from a *Memorandum*, or Account of his Lordſhip's own hand-writing.

Mr. Serj. *Pengelly*. My Lords, I don't know what he is going to do. I hope there is very little notice to be taken of what he hath ſaid. A Man tells a Story that is a Servant: I hope no Credit will be given to what he ſays.

Mr. Com. Serj. My Lords, I deſire he may inform your Lordſhips, when it was that he gave an Account to the Earl of *Macclesfield*, that ſo much money had been paid, and upon what Occaſion it was?

Mr. Serj. *Pengelly*. Give an Account! he knows nothing.

Mr. Com. Serj. My Lords, I hope you will not think it an improper Queſtion. He ſays, that he gave an Account, I deſire to know what

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he gave an Account of, and if he knows upon what Occaſion it was?

Mr. *Dupper*. My Lords, the Reaſon of my giving this Account was, There was a Diſcourſe between Mr. *Cottingham*, who was my Lord *Macclesfield*'s Secretary, and my ſelf, about the Office of Clerk of the Cuſtodies. Mr. *Cottingham* told me, that Mr. *Bennet* was going to ſurrender his Place of Clerk of the Cuſtodies: I asked him, to whom? He told me, it was to his Neighbour Mr. *Hammerſley*. I anſwered, I am very glad to hear it; there will then be a piece of money for my Lord Chancellor. Mr. *Cottingham* ſaid, That is more than I know; was there ever any money paid upon the Transfer of this Office? I ſaid, Yes, I remembred there was, and I never knew any Offices or Places under the Great Seal transferred without an Acknowledgment paid to the Great Seal. He asked me what? I told him I had a Copy of the Account of the Profits of the Great Seal, kept by my Lord *Harcourt* in his Time, and that I would look into that Copy, and tell him what had been paid on the Surrender of that Office. I did look into that Copy, and the next day I told Mr. *Cottingham*, that 250 Guineas had been paid on the Surrender of that Office. And afterwards, and before the Transfer, I told my Lord *Macclesfield* of it.

Mr. *Strange*. When Mr. *Hammerſley* was named, I deſire to know if Mr. *Cottingham* did not at that time call him his Neighbour?

Mr. *Dupper*. I did not know Mr. *Hammerſley* at that time; but Mr. *Cottingham* called him his Neighbour.

Mr. *Plummer*. My Lords, I deſire he may be asked, if he told my Lord *Macclesfield* of this before Mr. *Bennet* reſigned to Mr. *Hammerſley*?

Mr. *Dupper*. Yes, I did my Lords.

Mr. *Lutwyche*. My Lords, I deſire to ask him one Queſtion. I think he is pleaſed to ſay there is no Place under the Great Seal, but what an Acknowledgment is taken for: I deſire to know whether he himſelf hath not a Place given him by that noble Lord for his Life?

Mr. *Dupper*. No, my Lords.

Mr. *Lutwyche*. Had you no Place at all given you?

Mr. *Dupper*. I have the Reverſion of a Place, which is not fallen as yet.

Mr. *Lutwyche*. What Place is that?

Mr. *Dupper*. The Sealer's Place.

Mr. *Lutwyche*. Do you enjoy that Place?

Mr. *Dupper*. No.

Mr. *Lutwyche*. Was there any Money given for that Place?

Mr. *Dupper*. No, Sir: It is what I had for fifteen Years Service. I was his Clerk, and I acted as his Steward, in Town and Country, a great many Years; and his Lordſhip was pleaſed to give me that Reverſion as a Reward for the Labour and Pains I took in his Service.

Mr. Serj. *Pengelly*. My Lords, I deſire he may be asked, how long after it was that he carried this Account to Mr. *Cottingham*, that he ſpeaks of, how long after he had found it?

Mr. *Dupper*. I don't exactly remember: But as near as I can gueſs, it was the next Day, the firſt time that I ſaw him afterwards.

Mr. Serj. *Pengelly*. I deſire he may be asked, whether at that time he gave Satisfaction to Mr. *Cottingham*, that it ought to be inſiſted upon?

Mr. *Dupper*. I told him ſo much had been given for the Surrender of that Office, and I never knew of any Office under the Great Seal transferred without Money.

Mr. *Lutwyche*. I deſire Mr. *Dupper* may acquaint your Lordſhips what the yearly Value of that Office is, that was given to him?

Mr. *Dupper*. I never was in Poſſeſſion of it.

Mr. *Lutwyche*. Do you know what is the yearly Value of it?

Mr. *Dupper*. No.

Mr. *Lutwyche*. Can you give no Account of it?

Mr. *Dupper*. No: The Man hath been in Poſſeſſion of it, I believe, theſe threeſcore Years, and I believe he will live theſe threeſcore Years longer.

Mr. Serj. *Probyn*. My Lords, we deſire that Mr. *Laiton* may be called.

Mr. *Laiton* ſworn.

Mr. Serj. *Probyn*. I deſire he may be asked, whether he was not formerly a Curſitor?

Mr. *Laiton*. I was a Curſitor almoſt three and forty Years.

Mr. Com. Serj. I deſire that he will inform your Lordſhips, whether any Money was paid, either by him, or any other?

Mr. Serj. *Pengelly*. My Lords, we beg Leave to underſtand your Lordſhips Reſolution, whether it extends to allow an Examination as to the ſelling of any other Offices not contained in the Articles?

Mr. Serj. *Probyn*. My Lords, we ſhall endeavour to prove that Acknowledgments have been anciently and uſually paid upon Admiſſions into all Offices under the Great Seal. And this is Part of this noble Lord's Defence, That it is uſual for the Great Seal to take Money for the transferring of thoſe Offices. This Witneſs was one of the Curſitors in the Court of Chancery; therefore I hope it is proper to give Evidence of Money given for thoſe Offices, as being Offices under the Great Seal. Therefore, my Lords, I deſire he may be ask'd, whether he hath known of any Money paid to the Great Seal upon the Surrender, or Admiſſion of any Curſitor?

Mr. *Lutwyche*. My Lords, I ſubmit it whether it is proper for your Lordſhips to let them into this Evidence. I take it, that the immediate Queſtions before your Lordſhips are only upon two ſorts of Offices, one of the Clerk of the Cuſtodies, the other the Maſters in Chancery. Now whether your Lordſhips will let them into an Evidence of all the Offices of the Kingdom, which is very extenſive, I ſubmit to your Lordſhips Conſideration.

Mr. *Plummer*. Your Lordſhips obſerve, that we have not gone upon the 16*th* Article, where we have laid that he ſold ſeveral other Offices: conſidering the great Extenſiveneſs of it, and that it would draw this Tryal into a great length, we have waved it; and therefore ſubmit it to your Lordſhips Conſideration, whether he ſhall make his Defence to any thing we have not yet given Evidence to.

Earl of *Macclesfield*. This would be to put a great difficulty upon me. The Charge againſt me being founded upon a Suppoſition, that the taking

taking money upon admitting Perſons into Offices in the Court of Chancery is criminal; part of my Defence is, that the conſtant practice of my Predeceſſors ſhews the general Opinion to be otherwiſe; and therefore I have by my Anſwer inſiſted upon it generally, that not only for the one particular Office of the Clerk of the Cuſtodies, or Maſters in Chancery, but for all other Offices under the Great Seal, money hath been given; therefore whether the Office for which I prove the money to be given, be one of the Offices charged in the Articles, and proceeded upon, or another not charged, or charged and waved, it will be the ſame thing. The Argument is the ſame with reſpect to the foundation of the Accuſation, if in all other Offices, of which Perſons now living can give an Account, monies have been taken without Crime, and without Blame; by parity of Reaſon it may be taken in theſe: I offer this Evidence, not to ſhew I am not criminal with reſpect to the Curſitors Offices, their waving that general Article which compriſes them, admits it; but to make out that Branch of the Induction, in order to infer from the whole my not being criminal in the Particulars they do proceed upon; for if it was no Crime to take money from the Curſitors, and all the reſt, beſides the Maſters in Chancery and Clerk of the Cuſtodies, it is no more ſo to take it from them: If this Objection be allowed, the Proof, which in its full Latitude would be of great Extent, and go to all my Predeceſſors within 50 or 60 Years, will be confined to a very narrow compaſs, when reſtrain'd to what Account can be given in only two Sorts of Offices, by Perſons who ſaw the money paid, and happen to be ſtill alive. Beſides, for ſtrengthening that Argument from other Inſtances, I have in another Part of my Anſwer inſiſted, that other Perſons of great Wiſdom and Honour, have likewiſe, without Scruple, and without Cenſure, diſpoſed of other Offices for money; that this hath been conſtantly practiſed in the Diſpoſal of all Sorts of Offices in *Weſtminſter-Hall*, money hath been taken for them all along; this Proof I muſt be cut off from too, if I am to give Evidence only of what was done in the caſe of thoſe Offices for which they proceed againſt me: I hope therefore the Gentlemen will not oppoſe the going on to make the Proof propoſed by my Councel.

Mr. Serj. *Pengelly*. My Lords, if it be put in this general manner of all other Courts, and in all other Inſtances, we apprehend it will be a very extraordinary Examination. A Perſon is charged with a particular Charge of one Fact, and he would examine to another, with which he is not charged. This is beſides the Iſſue, and not before your Lordſhips. Here is a Charge by the Commons of *Great Britain*, and an Anſwer and Defence to that, which can go only to thoſe particular Offices charged. Now to introduce an Evidence of this Nature, is exceeding any Rule or Inſtance that hath been ever heard of. If they apprehend by propoſing and inſiſting on it in this High Court of Judicature, they ſhall be allowed to proceed in a method wholly new, we can't tell the Conſequence of ſuch an Allowance; and it is to no purpoſe for the Managers to come prepared to examine to a particular Fact ſtated between us, when there may be ten thouſand things inſiſted on that are not in Iſſue.

Lord Viſcount *Townſhend*. I can't ſay this is within the Rule your Lordſhips laid down. If it is inſiſted upon, the Councel muſt withdraw.

Earl of *Macclesfield*. My Lords, I don't know whether this will not go through a great Part of my Defence, which will be to ſhew that other Offices have been diſpoſed of by the Maſter of the Rolls, the Chief Juſtices, and other Judges. This is in my Anſwer: The Commons had Notice of it; and they have joyned Iſſue upon it. I wonder to hear it ſaid they have not joyned Iſſue, when in the Anſwer it is inſiſted upon, and they have replyed thereto. This is a Thing that theſe Gentlemen are very well aware of; it is ſo general and univerſal a Thing, that every Body knows of it. I don't know whether it is intended to make any Diſtinction between this Caſe, and what is done in other Caſes; if they do, I would be glad to hear it; if they do not, then I would beg your Lordſhips Determination upon it.

Mr. Serj. *Pengelly*. My Lords, we are not to declare our Opinion, whether there is any Difference, or not; the Queſtion is in Point of Evidence.

Mr. *Soll. General*. My Lords, I don't apprehend that we have joyned Iſſue on every Thing that the Noble Earl hath thought fit to put in his Anſwer. The Commons have charged him with ſeveral Crimes: He hath anſwered to thoſe Crimes: The Commons reply, that they are ready to make good their Charge. By this, Iſſue is joined upon every Thing in the Charge; but not upon every foreign Thing that he hath put into his Anſwer. We inſiſt that he is not to give Evidence of the Sale of any other Offices, but of thoſe that he is particularly charged with. As to the Curſitors Office, and other Offices that he is not charged with, we ſay he is to give no Evidence.

Mr. *Lutwyche*. My Lords, becauſe it is inſiſted upon, that whatever this Noble Lord hath ſaid in his Anſwer, we have replyed to; I would obſerve that the very Replication takes Notice of this very Thing, and was one of the Things conſidered of by the Commons, and therefore the Reply is, "That he hath endeavoured to "evade the Enquiries into his own Crimes, by "inſinuating Facts not material to the matters "charged." And therefore, my Lords, we inſiſt that he may not enquire into thoſe matters which we have not charged.

Mr. *Com. Serj*. I don't know whether I may be at Liberty to add, that I humbly apprehend, that what the Gentlemen of the Houſe of Commons now inſiſt upon, is contradicting your Lordſhips Reſolution already taken.

Then the Managers and Councel were order'd to withdraw, and being afterwards called in again, and returned.

Lord Chief Juſt. *King*. Mr. Serjeant *Probyn*, The Lords have reſolved, that the Councel for the Earl of *Macclesfield* be not permitted to give Evidence touching the Sale of the Office of Curſitors, for that no Evidence hath been given in Relation thereto by the Managers of the Houſe of Commons.

Mr. Ser. *Probyn*. Then (if it be your Lordſhips Pleaſure) we beg leave to call one Witneſs more, in Oppoſition to the Evidence given by Mr. *Thomas Bennet*, in Relation to a Sum of money paid by him upon the Surrender of his Office of Clerk of the Cuſtodies; he gave your Lordſhips an Account that he had paid the Sum of Sixty four Pounds, (beſides the Sum of One hundred and five Pounds, which he at firſt agreed to give the Great Seal) upon his Surrender of that Office. Now, my Lords, we ſhall ſhew your Lordſhips, that no part

of that Sum of Sixty four Pounds was really paid to the Great Seal, as Mr. *Bennet* ſeems to inſinuate, but was all laid out in the Fees and Expences of paſſing his Patent through the ſeveral Offices that are proper upon that Occaſion. And to this End we deſire that Mr. *Tench* may be called.

Mr. *Tench* ſworn.

Mr. Serj. *Probyn*. My Lords, we deſire Mr. *Tench* may inform your Lordſhips, if he was imployed in taking out the Patent for Mr. *Thomas Bennet*, upon his Surrender of the Clerk of the Cuſtodies?

Mr. *Tench*. My Lords, I was imployed by Mr. *Thomas Bennet* to ſue out the Patent, and I paid the Fees of every Office of paſſing the Patent, which comes to between 60 and 70 *l*.

Mr. Serj. *Probyn*. We deſire he may tell us what Officer he is?

Mr. *Tench*. I am Clerk of the Patents to the Attorney General, and Deputy Clerk of the Patents in Chancery.

Mr. *Com. Serj*. I deſire he may be asked, what part of thoſe Fees are paid to the Great Seal?

Mr. *Tench*. There is a Dividend of the money ariſing from the Patents, of this 1 *l*. 8 *s*. 4 *d*. and 3 *s*. went to the Great Seal.

Mr. *Com. Serj*. I deſire he may be asked, whether any more came to the Great Seal out of the 64 *l*. than 1 *l*. 11 *s*. 4 *d*?

Mr. *Tench*. I don't know that there is any more of the Dividend of the Patent. The reſt went amongſt others for their ſeveral Fees at the ſeveral Offices.

Mr. *Com. Serj*. I won't trouble your Lordſhips to ask to whom the reſt of the money belongs, but whether the Remainder is paid over to other Offices?

Mr. *Tench*. I don't know that any thing is paid to the Great Seal, upon paſſing the Patent Office, but the Dividend of 1 *l*. 11 *s*. 4 *d*.

Mr. *Com. Serj*. I deſire he may inform your Lordſhips, whether the Remainder is paid to other Offices?

Mr. *Tench*. Yes, to other Offices, to the Hanaper Office, the Secretary's Office, the Signet, and Privy Seal.

Mr. Serj. *Probyn*. My Lords, we ſhall trouble your Lordſhips with no further Evidence on this Article: But beg your Lordſhips Favour to begin our Evidence on the 5 *th*, and other Articles.

Mr. *Sandys*. My Lords, I deſire he may be asked, where he found the Warrant for paſſing the Patent at that Time?

Mr. *Tench*. I had the Warrant from the Secretary's Office.

Mr. *Sandys*. I deſire he may be asked, if he knows how it came there, and by whoſe Direction, if he knows who procured it?

Mr. *Tench*. My Lords, I drew a Petition by Mr. *Bennet*'s Direction, to the Secretary of State, upon that the Petition was referred to the Attorney General, and upon his Report, there was a Warrant. I know of no other Proceedings relating to it.

Mr. *Sandys*. My Lords, I deſire he may be asked, at whoſe Inſtance he drew up that Petition?

Mr. *Tench*. I drew it up at Mr. *Thomas Bennet*'s Requeſt.

Mr. *Sandys*. To what Purpoſe was that Petition?

Mr. *Tench*. The Petition recited that the Patent was granted to his Brother, and that upon his Brother's ſurrendring, it might be granted to him.

Mr. *Sandys*. It is the laſt Petition we deſire to be informed of, what the Purport of that was; not the Petition of Mr. *John Bennet*, when he ſurrendred to Mr. *Thomas Bennet*, but the Petition of Mr. *Thomas Bennet*, when he ſurrendred to Mr. *Hammerſley*?

Mr. *Tench*. It was a Petition reciting the Grant to Mr. *Thomas Bennet*, and that he might reſign to Mr. *Hammerſley*'s Uſe, who was a Perſon well affected to his Majeſty and the Government.

Mr. Serj. *Probyn*. My Lords, we now proceed to the other Articles, which relate to the Preſents made by the Maſters in Chancery to the Earl of *Macclesfield*.

Upon this the Houſe adjourned to the next Morning Ten a Clock.

Thurſday *the* 13*th of* May, 1725. *The Sixth Day.*

The Lords being ſeated in their Houſe, and the two Proclamations being made as on the former Days:

LORD Chief Juſt. *King*. Mr. Serjeant *Probyn*, you may go on with your Evidence.

Mr. Serj. *Probyn*. My Lords, we beg leave to lay before your Lordſhips ſome inſtances, where, upon former Admiſſions of Maſters in Chancery, Sums of Money have from time to time been taken by the Great Seal. We deſire Mr. *Meller* may be called again.

Accordingly Mr. *Meller* appeared.

Mr. Serj. *Probyn*. We deſire Mr. *Meller* may be asked, whether he knows of any Sum of money paid to the Great Seal, upon the Admiſſion of a Maſter in Chancery, and what Sum?

Mr. *Meller*. My Lords, I humbly apprehend, that the Subjects of *Great Britain* are not compellable in any caſe to give an Anſwer to any matter that may be to their Prejudice. I ſpeak it with the greateſt Submiſſion to your Lordſhips. For my part, I am very unwilling to do any thing that may any ways leſſen the Security of the Subject, therefore I humbly hope your Lordſhips will not compel me to give an Anſwer to any Queſtion of this Nature. I humbly ſubmit it to your Lordſhips Judgment.

Earl of *Macclesfield*. My Lords, the Queſtion he is asked is a general Queſtion, whether he knows of any money paid to the Great Seal by any Maſter in Chancery upon his admiſſion. Whether he knows, or doth not know it?

Mr. Serj. *Pengelly*. My Lords, we beg leave to acquaint the Houſe of the Circumſtances of Mr. *Meller*, from whence the Objection riſes. He was formerly a Maſter, but before the late Act of Parliament he quitted that Office, and hath no Indemnification,

demnification, as the preſent Maſters have by that Act. Therefore, as I apprehend, his Objection is, that he can't give an Anſwer to this Queſtion, without ſubjecting himſelf to a Penalty, and accuſing himſelf of an Offence againſt the Law.

Mr. *Lutwyche.* This general Queſtion tends to make him accuſe himſelf, and ſubject himſelf to a Penalty.

Earl of *Macclesfield.* My Lords, I would gladly know whether theſe Gentlemen object to this Queſtion or not; if they object themſelves to it, they have a right ſo to do, and to offer their Reaſons, and they muſt be left to your Lordſhips Judgment. But they have no Right to inſtruct a Witneſs.

Mr. *Lutwyche.* I never endeavoured to inſtruct any Witneſs. It is very well known I never attempted any ſuch thing; and that noble Lord knows it. I am now here, not as Councel, but as one of the Managers for the Houſe of Commons, and by their Command, and ſo have more Reaſon to take Notice of this Reflection. We do not inſtruct Witneſſes, this is no ſuch thing. It is an Objection which we have a Right to make. We have done it already, and have had your Lordſhips Determination upon it. It is not ſo very long ago, but the noble Lord may remember this very Queſtion was directly asked of Mr. *Bennet*, and then refuſed; the next Day asked again by a ſide-wind, whether he knew any, and what money had been given for the Place? and rejected by your Lordſhips; and then a Queſtion was asked, How much he knew the Place ſold for? and your Lordſhips likewiſe refuſed that: Here now is a Queſtion asked of a man that hath been a Maſter in Chancery, and not indemnified by the laſt Act, whether in Effect he paid any money for his Office? Your Lordſhips thought this induced a penalty, becauſe you thought it neceſſary to paſs an Act of Parliament to indemnify the preſent Maſters; but it is well known it doth not extend to thoſe who were Maſters before; and therefore as there is a Penalty annexed to it, he ought not to anſwer this Queſtion. Beſides, for the ſake of our Proceedings, it ought not to be anſwered, and we have a Right thus to interpoſe, that when your Lordſhips have refuſed the ſame thing in another man, the ſame is not to be inſiſted upon again.

Mr. Serj. *Pengelly.* My Lords, it is the Duty of the Managers to take Notice of the Behaviour of the Lord impeached. Whether he apprehends that he hath a Right to controul the Managers in this Houſe, and whether that ariſes from the Seat he enjoys, your Lordſhips will conſider the Conſequences of this Behaviour. When the firſt Day we were told, that we were working up the Witneſſes, and now that we are inſtructing them, whence could this Lord have this Imagination, but from his own former Practice?

Earl of *Macclesfield.* My Lords, as to that Gentleman that thought himſelf reflected upon, he greatly miſtakes me. I did not intend to reflect upon him as going to inſtruct the Witneſs in his Evidence; I believe him as far from it as any man in *England.* I know him to be a perſon of too much Honour; and I had not the leaſt Thought when I ſpoke it, of his inſtructing a Witneſs in that Senſe. But here a Witneſs is making ſome Difficulty in anſwering a Queſtion, and I thought that that Gentleman who ſpoke firſt, was ſtating that which made the Witneſs's Objection; which I apprehended did not belong to the Managers to do. That is what I meant by inſtructing: The Queſtion that is asked is, whether he hath known of any money given to the Great Seal, upon an Admiſſion of a Maſter in Chancery? Say they, he was a Maſter in Chancery himſelf, therefore it may include his giving money upon his being admitted: But be that ſo, he may know of other Perſons beſides himſelf that gave money. My Queſtion therefore is general, whether he knows of any money given to the Great Seal on Admiſſion of a Maſter in Chancery? The Queſtion your Lordſhips reſolved was as to Mr. *Bennet* himſelf, and confined to his ſingle Office; and had I asked Mr. *Meller* what he had given on his Admiſſion to his own Office, it had been another matter, and within your Lordſhips Reſolution. But the Queſtion that is now asked, includes what he knows hath been given by other Maſters; therefore he may give an Anſwer without charging himſelf. If he anſwers that he doth not know of any money given by any other Maſter except himſelf, then it will come to the Queſtion the managers would bring it to. In the mean time give me leave to ſay, that thoſe Gentlemen, by being Managers of the Houſe of Commons, have not a Right of treating Perſons in a different manner than what they ſhould do if they were not Managers. That that Gentleman ſhould ſay, that what I ſpoke about inſtructing of Witneſſes, ariſeth from a Practice of my own, is Language unbecoming the Dignity of your Lordſhips Bar. Is this a Way of treating Mankind? Is this a fit method of carrying on a Proſecution? Is this decent ſpeaking before ſo auguſt a Judicature as this? What I ſaid of inſtructing a Witneſs, imported no faulty way of Inſtruction. —— (*After a ſhort Pauſe*) I have a great deal of Preparation not to be diſturbed at any Expreſſions that fall upon this Occaſion. It is a faulty Way of inſtructing a Witneſs, to tell him what he ſhall ſay; but to tell him he hath a legal Objection to a Queſtion that is asked, I know no Crime in that. My Lords, I beg Pardon for taking ſo much Notice of this matter; but I inſiſt upon an Anſwer to this Queſtion, whether he knows of any money given to the Great Seal, on an Admiſſion of a Maſter in Chancery? He may anſwer affirmatively, without at all affecting himſelf; and I ſubmit, whether he ought not to do it.

Mr. *Plummer.* My Lords, if the Councel for the Noble Lord have done, I beg Leave to reply. The Noble Lord ſays, that this Gentleman may poſſibly anſwer, and not accuſe himſelf. But if by the Anſwer he may accuſe himſelf, it is a Reaſon why he ſhould not anſwer. The method propoſed, that he may ſay, he doth not know of any but himſelf, it is accuſing himſelf. As for the other Point about inſtructing Witneſſes, it is not our Witneſs, but his own Witneſs, who refuſes to anſwer.

Mr. *Onſlow.* The Managers cannot but obſerve the indecent Behaviour of this Lord, and his unworthy manner of treating us. What we ſay here, we are ready to ſay any where. We do not think the Lord at the Bar ſhould be directing the Managers, as if he ſat in his Place as Judge: If we do any thing unbecoming, we are ſubject to your Lordſhips Judgment. We appear not here as common Proſecutors, and are not to be treated as common Councel by him, as he would have treated Councel in another Place. We are here Advocates for all the Commons of *Great Britain*, to demand Juſtice againſt this Earl; and ſubmit it to your Lordſhips, whether he is to treat us in this unbecoming manner. As for the Queſtion, the very Reaſon he now gives for asking it, is the

ſame that was given by him for examining Mr. *Bennet*, and your Lordſhips then over-ruled it. It is only by a ſide Wind asking a Queſtion of a Witneſs, the Anſwer whereto will unavoidably charge him with a Crime: He cannot anſwer without charging himſelf. This Lord hath laid a Trap for the Witneſs to accuſe himſelf. He ſays he may anſwer that he knows nothing of any money given by any Maſter but himſelf; which is directly ſaying that he himſelf hath given money. We hope therefore this Queſtion ſhall not be asked; and we inſiſt upon the Objection.

Mr. *Palmer*. In Duty to the Houſe of Commons, I think my ſelf obliged to take Notice of the ſtrange Behaviour of this Lord in this Inſtance. According to your Lordſhips own Rule, tho' he ſits within the Bar, yet he is not a Judge; and therefore I muſt beg for my ſelf, in the Names of the Managers, and in the Names of all the Commons of *Great Britain*, that no ſuch Language or Behaviour be again uſed; if it ſhould, we cannot bear it, but muſt retire.

Earl of *Macclesfield*. My Lords, I deſire the general Queſtion that I have propoſed may be asked; I do not know what is your Lordſhips Pleaſure; I think I have a Right to have it anſwered.

Mr. *Plummer*. I object to the Lord's going on. The Lord hath anſwered; we have replyed; and I inſiſt upon it he hath not a Right to ſpeak any more.

Duke of *Argyle*. I hope they will withdraw.

Ordered to withdraw.

Then the Managers and Councel withdrew, and being called in again, and returned:

Lord Chief Juſt. *King*. Mr. Serjeant *Probyn*, the Queſtion propoſed by the Noble Earl to Mr. *Meller* was, whether he knew of any money paid to the Great Seal by any Maſter on his Admiſſion; and Mr. *Meller* inſiſting that he had been a late Maſter in Chancery, and was not obliged to anſwer the Queſtion, becauſe it might tend to accuſe himſelf; the Lords upon Debate are of Opinion, that he is not bound to anſwer that Queſtion.

Mr. Serj. *Probyn*. My Lords, then we deſire he may be asked, whether he knows of any Sum of money paid by any other Perſon, except himſelf, upon the Admiſſion of any Maſter?

Mr. *Com. Serj*. I would not preſume to ask any Queſtion that is improper, I underſtand your Lordſhips Reſolution to be, that we are not to ask the general Queſtion of Mr. *Meller*, becauſe it might affect himſelf; this Queſtion, we think, will not; whether he knows of any Sum of money given upon the Admiſſion of any other Maſter?

Mr. Serj. *Pengelly*. My Lords, we ſubmit it, whether this Queſtion differs at all in Conſequence; tho' it be not in the ſame Words, yet it is to the ſame Effect: It is in other Words to ask the ſame Queſtion over again. We hope they will not give your Lordſhips this Trouble.

Mr. *Lutwyche*. My Lords, the Queſtion implies that he gave money himſelf.

Lord *Lechmere*. If the Councel would explain themſelves more particularly, name the Maſter, the Perſon who received it, or any other particular Fact; then it will appear whether that be a proper Queſtion.

Mr. Serj. *Probyn*. My Lords, we humbly apprehend, that we are at Liberty to ask this Queſtion in the Form propoſed, otherwiſe we ſhall in a great Meaſure be precluded from the juſt Defence of the Noble Earl. We could not preſume to ask theſe Witneſſes beforehand, who were the Perſons that gave, or the particular Perſons that received; but as theſe Perſons have been in the Office, and muſt know the Nature of admitting the Maſters in Chancery; we hope they will explain it in their Evidence, and name the particular Perſons, who either gave, or received Money upon that Occaſion. We are not proper to ask more particularly.

Mr. *Com. Serj*. My Lords, I ſhall be very loth to give any Diſtaſte to this Honourable Houſe, therefore I beg Leave to know, whether or no we have Liberty to ask this Queſtion, and whether your Lordſhips Reſolution extends to it? I humbly take it, we are at Liberty to ask the Queſtion, and the Witneſs is not obliged to anſwer, if he apprehends that as the Queſtion is formed he cannot anſwer without an Inconvenience to himſelf. I would not willingly ask any Queſtion that I thought the Houſe would think improper.

Lord *Trevor*. If the Noble Lord inſiſts upon this Queſtion, it is proper that he ſhould name ſome Perſon, concerning whom he would ask; otherwiſe, it is indirectly to overthrow your Lordſhips Reſolution.

Earl of *Macclesfield*. My Lords, I am very unfortunate in this Matter. I would ask him the Queſtion in ſuch a Manner, as ſhould not carry any the leaſt Imputation on him: but if I ſhould firſt name one Maſter, and afterwards another, in ſo great a number of Maſters, it would be tedious; I only ask in ſhort, what he knows of any Money taken by the great Seal for, or on the Admiſſion of other Maſters? I don't ask him concerning himſelf, but only concerning other Maſters; Whether he knows any thing of the Tranſactions of other Maſters Admiſſion beſides his own? I hope your Lordſhips will think this may be asked, with this Explanation and Declaration, that it don't extend to any thing relating to himſelf; but only whether he knows any thing concerning any Money paid by any other Perſons? and to name them particularly.

Lord Chief Juſt. *King*. You hear the Queſtion.

Mr. *Meller*. Is it your Lordſhips Pleaſure that I ſhould anſwer to the Queſtion as it is now form'd? My Lords, I don't know, or remember, that ever I had a Diſcourſe with any Maſter about what he gave, or what he was to give, for any Place; except I have heard Dr. *Eddisbury* ſay——

Mr. *Lutwyche*. My Lords, we object to this as not being Evidence, but only hearſay.

Mr. *Meller*. Except Dr. *Eddisbury*, I don't know one indeed.

Mr. Serj. *Probyn*. My Lords, we deſire that Mr. *Lovibond* may be called.

Mr. *Lovibond* called.

Mr. Serj. *Probyn*. My Lords, we hope that Mr. *Lovibond*, being one of the preſent Maſters, and conſequently within the Indempnity of the late Act of Parliament, may be examined, as to what happened in his Caſe: And we deſire that he may be asked what Sum of Money was paid to the Great Seal, on his being admitted a Maſter in Chancery?

Mr. *Lovibond*. My Lords, as to that Tranſaction, it is many Years ago, above twelve Years ago, I will recollect what I know of it to the beſt of my Remembrance. My Lords, I never had any Treaty in that Affair with the Great Seal, nor with any Officer belonging to the Great Seal; nor did I employ any Body in it. But there was an Acquaintance of mine, a Maſter in Chancery, ſince deceaſed, who apprehending it to be for my Service, without my Knowledge tranſacted it.

Mr. Serj. *Probyn*. Who was it?

Mr.

Mr. *Lovibond.* Mr. *Browning*, He came to me, and told me, I have ſettled the whole Matter, you muſt be ſworn in this Night, and you muſt ſend to Mr. *Cottingham* or Mr. *Appleby*, then Officers under the Great Seal, 700 *l.* in Money or Bank Bills. I did ſend it that Night, and was then ſworn in.

Mr. Serj. *Pengelly.* My Lords, I deſire he may be particular as to the Time: It is neceſſary he ſhould be certain.

Mr. *Lovibond.* Mr. *Browning* ſaid, he had ſettled it with the great Seal, that I ſhould be ſworn in that Night; my Lord *Harcourt* was then *Chancellor.*

Mr. *Strange.* My Lords, I deſire he may be asked, Whether he was admitted upon a Death or a Surrender?

Mr. *Lovibond.* I was admitted upon a Surrender.

Mr. *Strange.* By whom?

Mr. *Lovibond.* Mr. *Pitt.*

E. of *Strafford.* Before the Witneſs goes, I deſire to ask him how much he gave to Mr. *Pitt* upon his Surrendring?

Mr. *Lovibond.* It was 2000 *l.*

L. *Harcourt.* My Lords, If the Gentleman is not gone, I deſire to ask him a Queſtion or two.

Mr. *Lovibond* called again.

L. *Harcourt.* My Lords, I deſire he may be asked, Whether he was worth ſo much Money as to pay 2700 *l.* of his own Money at that Time?

Mr. *Lovibond.* Yes, my Lords, and much more.

L. *Harcourt.* I deſire he may be asked, Whether he paid it out of his own Money, or out of the Suitors Money?

Mr. *Lovibond.* I paid it out of my own Money.

L. *Harcourt.* I deſire he may be asked, Whether Mr. *Pitt*, at the Time of his Admiſſion, transferred and actually delivered over to him all the Money of the Suitors that then was in his Hands?

Mr. *Lovibond* Mr. *Pitt*, to the beſt of my Belief, delivered over every Thing that was in his Hands to me.

Mr. Serj. *Probyn.* My Lords, We deſire that Mr. *Cottingham* may be called again.

Mr. *Cottingham* called.

Mr. Serj. *Probyn* My Lords, We deſire that Mr. *Cottingham* may be asked, Whether he knows any thing of any Tranſaction relating to the Payment of any Sum of Money on the Admiſſion of Mr. *Holford.*

Mr. *Cottingham.* My Lords, if I remember right, there was 800 *l.* paid.

Mr. Serj. *Probyn.* How long ago?

Mr. *Cottingham.* It is ſeveral Years ago: There was 800 *l.* or 800 Guineas given or paid on his Admiſſion, ſeveral Years ago.

Mr. Serj. *Probyn.* To whom?

Mr. *Cottingham.* My Lords, Sir *Richard Holford* deſired me to recommend his Son to the noble Lord that then had the Great Seal.

Mr. Serj. *Probyn.* Who was it?

Mr. *Cottingham.* The Lord *Harcourt*, Sir *Richard Holford* was my old Friend and Acquaintance; I accordingly did recommend him; Mr. *Holford* came under a good Character to my Lord *Harcourt*; my Lord agreed to admit him, but he firſt deſired to know whether he had any Eſtate in Poſſeſſion ſufficient to anſwer the Suitors Money? Upon my ſaying this to Sir *Richard Holford*, Sir *Richard* ſaid, He had none in Poſſeſſion, but agreed to ſettle an Eſtate upon his Son; and to the beſt of my Remembrance, it was either 800 *l.* or 800 Guineas that was given on his Admiſſion, for the Uſe of my Lord *Harcourt.*

L. *Lechmere.* To whom was it paid?

Mr. *Cottingham.* I can't ſay whether it was paid to me, or to Mr. *Appleby.*

Dr. *Sayer.* Who carried the Propoſal?

Mr. *Cottingham.* I carried the Propoſal. Sir *Richard Holford*, as I told you, being my Friend and Acquaintance, deſired me to do it: Accordingly I tranſacted the whole Matter; being an upper Secretary, it was left to me.

Mr. *Lutwyche.* My Lords, I deſire to ask this Witneſs one Queſtion as to this Matter. He ſays, That Mr. *Holford* was recommended as a Man of a good Character; I deſire to know whether he hath not ever ſince maintained that good Character?

Mr. *Cottingham.* Yes, he hath made an admirable good Maſter as ever I knew; and hath executed his Office with as much Honour and Integrity as any Maſter. I never heard any Complaint againſt him in my Life.

Mr. *Lutwyche.* Can you recollect who paid the Money, Mr. *Holford*, or Sir *Richard Holford?*

Mr. *Cottingham.* Sir *Richard*, I believe: I can't recollect He was a Young Man; I preſume, Sir *Richard Holford*, his Father, paid the Money.

Mr. *Com. Serj.* I deſire he may inform your Lordſhips, whether it was on a Death or Surrender?

Mr. *Cottingham.* As I told you before, It was on a Surrender: Upon the Surrender of Sir *Robert Legard*, If I remember right.

L. *Harcourt.* My Lords, If that Witneſs is not gone, and the Councel for the Earl, and the Managers for the Houſe of Commons have done with him, I deſire to ask him, If he can tell whether any Account was taken of the Suitors Money by his Predeceſſor, and whether all the Suitors Money was delivered up by Sir *Robert Legard* to Mr. *Holford* at the Time of his Admiſſion?

Mr *Cottingham.* My Lords, I believe it was. But I was not privy to that, I did not tranſact that Matter; I have heard that an Account was made up

E. of *Strafford.* I would not ask the ſame Queſtion twice; I think no Body hath asked it already; I deſire to know, If he knows of his own Knowledge, what was given to Sir *Robert Legard* for his Surrender?

Mr. *Cottingham.* I know nothing of it.

L. *Harcourt.* My Lords, If I might have your Lordſhips Indulgence, in order to have this Matter a little further explained, I deſire Mr. *Holford* himſelf, or Mr. *Appleby*, or both of them may be called.

Mr. *Holford* called.

L. *Harcourt.* I deſire to know of Mr. *Holford*, Whether at the Time of his Admiſſion, when he was ſworn Maſter, Sir *Robert Legard* transfer-

red and delivered over to him all the Effects of the Suitors?

Mr. *Holford* He did, my Lords.

L. *Harcourt.* I desire to ask him, Whether the Money, that it was said he presented to the great Seal on his Admission, was his Father's Money, or his Money, or whether it was out of the Suitor's Money?

Mr. *Holford.* My Father paid it before any thing was delivered to me.

E. of *Strafford.* I desire to ask the Gentleman this Question, What Money he paid to Sir *Robert Legard* on his Admission to his Place?

Mr. *Holford.* My Lords, I did not give it my self; I can tell your Lordships what I believe was given, and I have some Reason to think I know the Truth; I believe it was 2000 *l.*

Mr. Serj. *Probyn.* My Lords, I desire he may be asked, How long it was after his Admission before these Accompts and Effects were delivered over to him?

Mr. *Holford.* My Lords, When I came to my Lord *Harcourt* to be sworn in, my Lord *Harcourt* had an Account delivered there of what was in Sir *Robert Legard*'s Hands. My Lord *Harcourt* took the Paper in his Hand, and asked me, If I was satisfied to be charged with that? I told him, Yes. I was then sworn in, and a Day or two after the Things were delivered over to me by Sir *Robert Legard.*

Mr. *John Bennet* called.

Mr. Serj. *Probyn.* I desire he may be asked, What Money was paid by him to the great Seal on his Admission?

Mr. *Bennet.* I gave Mr. *Woodford* the Secretary of the great Seal at that Time 500 *l.* I don't know that it was given to the great Seal; I gave it with that Design.

Mr. Serj. *Probyn.* When was it?

Mr. *J. Bennet.* About two or three Days before I was admitted.

Mr. Serj. *Probyn.* When?

Mr. *J. Bennet.* It was in *March*, 1716.

Mr. Serj. *Probyn.* Who was Chancellor then?

Mr. *J. Bennet.* My Lord *Cowper* was Chancellor.

Mr. Serj. *Probyn.* Whether was it paid before his Admission?

Mr. *J. Bennet.* It was paid before my Admission.

Mr *Com. Serj.* I desire he would inform your Lordships, Whether he came in upon a Surrender or a Death?

Mr. *J. Bennet.* It was upon a Surrender.

L. Ch. J. *King.* Upon the Surrender of whom?

Mr. *J. Bennet.* Of Mr. *Medlicot.*

L. *Bathurst.* I desire he may be asked, Whether he paid it out of his own Money?

Mr. *J. Bennet.* It was my own Money.

L. *Bathurst.* I desire he may be asked, Whether he had any Account of what was in the former Master's Hands, and when delivered over to him?

Mr. *J. Bennet.* The Effects were all deliver'd over to me in a Week's Time, except some very small Matters.

L. *Bathurst.* What was the Money that was given to your Predecessor?

Mr. *J. Bennet.* 3000 *l.*

L. *Bathurst.* Was that paid out of the Suitors Money, or out of your own?

Mr. *J. Bennet.* It was paid out of my own Money.

Sir *Thomas Gery* called.

Mr. *Com. Serj.* My Lords, The Question that I shall propose to Sir *Thomas Gery*, is under the Apprehension that I mentioned before, that we are at Liberty within the Meaning of your Lordships Resolution to propose it, he being at Liberty to answer or not to answer, if the Question carry any Imputation upon him. I would not ask a Question that is improper: I desire that Sir *Thomas Gery* will inform your Lordships what he knows hath been paid to the great Seal, upon the Admission of a Master in Chancery?

Sir *Tho. Gery.* My Lords, I never did know, of my own Knowledge, of any Sum paid to the Hands of any Lord Chancellor whatsoever.

Mr. Serj. *Probyn.* I desire he may answer the Question, Whether he hath known any Sum of Money paid to the Use of the great Seal, or of my Lord-Keeper or Lord-Chancellor, upon the Admission of any Master?

Sir *Thomas Gery.* I can't tell how that may affect me; I refer that to your Lordships. I think I am not bound to answer.

E. of *Macclesfield.* I think he said, He doth not know of any Money paid to a Lord Chancellor. Doth he intend to include Lord-Keeper?

Sir *Thomas Gery.* Neither Lord-Keeper, nor Lord-Chancellor.

E. of *Macclesfield.* It may be, not into the Hands of a Lord-Chancellor or Lord-Keeper. I desire he may be asked, If he hath not known it paid to the Use of the Lord-Chancellor or Lord-Keeper?

Sir *Tho. Gery:* That, I hope, I shall not be obliged to answer. I submit that to your Lordships.

M. Serj. *Probyn.* If the Gentleman is not pleased to give a more particular Answer, we must submit.

L. *Harcourt.* I desire to ask this Witness one Question, which will not draw him into any Inconvenience, Whether ever he was required in any Lord-Chancellor's or Lord-Keeper's Time, to make up an Account of the Suitors Money, and whether ever he did so?

Sir *Tho. Gery.* Yes, I did it three several Times; once in my Lord's *Cowper*'s Time; and when the noble Lord that asks me the Question was in that place, I did the like; and I did it again when my Lord *Cowper* was Chancellor. At all those Times I gave a particular Account of the Sums of Money in my Hands, the Time it came in, and how it was disposed of, and the distinct Securities, in distinct Columns.

E. of *Strafford.* He says twice in my Lord *Cowper*'s Time: I take it, he means both the Times that my Lord *Cowper* was Chancellor?

Sir *Thomas Gery.* Yes, my Lords; and the same in my Lord *Harcourt*'s Time.

L. *Harcourt.* I desire he may be asked, Whether all the rest of the Masters did so as well as himself?

Sir *Thomas Gery.* I believe they did; I have heard them all declare so.

Mr. Serj. *Probyn.* My Lords, We have now called all the living Witnesses that are willing or compell-

compellable to ſpeak to this Article. We have a great many other Witneſſes that would ſpeak to this, as a conſtant Uſage time out of Mind: But we apprehend it to be againſt your Lordſhips Reſolution to call and examine any Witneſſes but to what they can ſpeak of their own Knowledge, and them we have produced. We ſhall now beg leave to proceed to prove, That the Offices in the Court of Chancery are increaſed in their Value beyond what they were formerly, that not only theſe, but all other Offices, as they have increaſed in Value, have increaſed in the Price; all Offices have riſen in Value, and the Price given in this Inſtance, is no more than in Proportion to the Prices given for others.

Mr. *Common Serj.* We apprehend, my Lords, it is ſo notorious, that all Sorts of Offices have riſen in their Value, that a very ſmall Evidence will be ſufficient. We have a great many Witneſſes to this purpoſe, we will only call ſome few. We deſire Mr. *Steele* may be called.

Mr. *Steele* ſworn.

Mr. Serj. *Pengelly.* My Lords, We deſire to know before they proceed, Whether they deſign to ask as to thoſe Offices your Lordſhips gave them Direction laſt Night not to ask to. Your Lordſhips gave them Directions not to ask any Queſtions, but to the particular Offices mentioned in the Articles; this is a Piece of Dexterity to elude that Reſolution.

Mr. *Lutwyche.* My Lords, I ſubmit it to your Lordſhips, Whether this Attempt is not directly the ſame as that which was over-ruled Yeſterday. If the Witneſs is to give an Account whether the Price of the Curſitor's Office, or other Offices have riſen, they muſt then ſhew that they were ſold; which is the very Queſtion your Lordſhips determined they ſhould not ask to.

Mr. Serj. *Probyn.* My Lords, We were then directed by your Lordſhips not to prove any Money was paid to the Great Seal for any other Offices, but thoſe particularly mentioned in the Articles. We don't pretend now to ask as to the Payment of Money to the Great-Seal, but only whether Offices in General have not much advanced in their Prices?

Mr. Serj. *Pengelly.* My Lords, It is extraordinary Uſage to tell us of Offices in General; there are private Offices, there are Offices in other Courts in *Weſtminſter Hall.* We apprehend your Lordſhips Determination is ſo ſtrong againſt what is now attempted, that they would not urge it, unleſs they thought that the Managers had forgot every Thing that happened.

Mr. *Common Serj.* My Lords, The Queſtion we ask is, as to Employments in General, Offices in the Law, or any other Offices; we deſire to inform your Lordſhips in General, that the Value of all Employments, not of the Law only, hath riſen.

E. of *Macclesfield.* I will inform your Lordſhips how the Matter is. I believe this Gentleman is not intended to be asked what Offices belonging to the Great-Seal are Worth, but what Difference there is in the Value of other Offices, to what they were heretofore; particularly how the Prices of the Seats in the Six Clerks Office are increaſed, that they were once at ſuch a Rate, and what they are now; that is the Matter, as I take it.

Mr. *Lutwyche.* My Lords, I apprehend the Direction was given to the Noble Lord, not to ask concerning the Sale of any Office but what was in the Articles, and the Managers had given Evidence to. Now to ask the Difference or Increaſe of the Prices of a Clerk in Chancery's Place, is, we apprehend, to ask to the very Thing that your Lordſhips have over-ruled already.

E. of *Macclesfield.* My Lords, this is not like the Curſitors-Office, which is in the Diſpoſition of the Great-Seal; your Lordſhips Reſolution was, That the Witneſs was not to anſwer as to their giving Money to the Great-Seal. The Evidence we are now upon, is an Inquiry that relates not to any Money given to the Great-Seal, but what thoſe Perſons paid to one another for an Office that doth not belong to the Great-Seal.

Mr. *Onſlow.* At the End of your Lordſhips Reſolution Yeſterday, the Reaſon given why they ought not to be let into the Examination as to the Offices then in Queſtion, was, becauſe no Evidence had been given thereto by the Managers, and it was not charged nor mentioned in the Articles, altho' the Noble Lord did inſiſt that he ſhould be let into that Examination, becauſe in the Preamble of his Anſwer, he had taken Notice of thoſe Offices. This Caſe is ſtronger, becauſe the Offices now deſired to be Examined into, are neither in the Articles nor Anſwer, nor hath any Evidence been given to them; and therefore we hope he ſhall not be let into this Examination.

Mr. *Common Serj.* We humbly hope your Lordſhips will permit us to Enquire whether the Buſineſs of thoſe Offices in the Court of Chancery is not greatly increaſed, and whether the Value of the Offices be not increaſed with it?

Mr. Serj. *Probyn.* Notwithſtanding your Lordſhips Direction in the former Queſtion, we ſubmit whether we may not be permitted to ask this Queſtion, Whether the Offices in the Court of Chancery are not increaſed in Value much beyond what they were Seven Years ago?

Mr. Serj. *Pengelly.* My Lords, That is the very Queſtion that we Object to.

E. of *Macclesfield.* What I before offered was, that there had been a Uſage to make Preſents to the Great-Seal; I apprehend your Lordſhips over-ruled it as to the Curſitors-Office, becauſe there was no need of an Excuſe as to that Office, as there is no mention made of it in the Articles, nor any Proof offered againſt me. This is not of any Payment to the Great Seal, but goes by way of Excuſe as to the Sums, to ſhew the Increaſe or Difference of the Prices of Offices in General. It is notorious that Money now carries a leſs Intereſt, and that the Price of all Offices is increaſed. I don't know whether the Gentlemen will deny it. If they do not, I will not trouble your Lordſhips any farther about it.

Mr. Serj. *Pengelly.* We have no Occaſion either to Confeſs or Deny any Thing that is not before your Lordſhips in Judgment. Therefore, if they expect any Anſwer, we give this, That it is not before your Lordſhips in Judgment.

Mr.

Mr. *Lutwyche.* I apprehend the Reaſon of your Lordſhips Reſolution Yeſterday, was, That there was no Charge in the Articles concerning thoſe Offices; the ſame Reaſon equally holds to what they are asking now in relation to Clerks in Chancery.

Mr. *Plummer.* My Lords, I ſhould be extreme ſorry to make any Objection to any Evidence that is Material: But, if he is pleaſed to Examine this Gentleman how far by the Increaſe of Buſineſs the Value of any Office is riſen, that muſt be of the Annual legal Value, and not according to the Liberties he left to his Maſters.

Mr. Serj. *Probyn.* I deſire he may be asked, Whether he doth not know that the Prices of Offices are greater now than they were formerly?

Mr. Serj. *Pengelly.* My Lords, we don't underſtand they have any ſuch Permiſſion to ask that Queſtion. To repeat the ſame Thing over and over again, we apprehend they think we are aſleep.

E. of *Macclesfield.* Your Lordſhips ſeem not to be of Opinion that this Queſtion ſhould be asked; therefore to ſave your Lordſhips time, I will wave the Queſtion.

Mr. *Goldesbrough* ſworn.

Mr. Serj. *Probyn.* We will proceed in the next Place, in Confirmation of that Part of the Anſwer to this Article, That two Sums of Money, mentioned to be paid to my Lord *Macclesfield* by Mr. *Kinaſton* and Mr. *Bennet*, were both paid back into the Court of Chancery. We deſire Mr. *Goldesbrough* may be asked, Whether he knows of the two Sums of 1500 Guineas, and 1500 Guineas, that were paid by my Lord *Macclesfield* into the Court of Chancery.

Lord *Lechmere.* My Lords, I beg pardon. I think the Queſtion that the Noble Earl hath waved, if I miſtook not, was about the Riſe and Increaſe of Value of the Offices in Chancery. Now, notwithſtanding the Noble Lord hath waved, yet it may be proper for your Lordſhips Conſideration, whether he ſhould not have Liberty to ask it, if he thinks fit.

E. of *Strafford.* I think what the Noble Lord hath ſaid is conſiderable, and it may be proper for our Judgment.

Ld. Viſc. *Townſhend.* I move that they may withdraw.

Ld. *Lechmere.* It may be proper to have the Queſtion repeated again. I therefore deſire that the Councel for the Earl would repeat the Queſtion again that they would have asked of Mr. *Steele.*

Mr Serj. *Probyn.* My Lords, The Queſtion is, Whether the Price of Offices in the Court of Chancery, and in the Six Clerks Office, particularly, are increaſed now more than antiently they were.

Thereupon the Managers and Councel withdrew, and being returned,

Ld. Ch. J. *King.* Mr. Serjeant *Probyn*, the Lords have conſidered the Queſtion on which you withdrew Their Lordſhips are of Opinion, That you are at Liberty to ask the Queſtion, Whether the Price of Offices in the Court of Chancery, and in the Six Clerks Office particularly, be increaſed now more than heretofore they were?

Mr. *Steele.* My Lord, I came to be a Clerk in the Chancery Office in the Year 1687. I ſerved my Clerkſhip in the Office, and in that Year, and for ſeveral Years afterwards, I know that waiting Clerks Places were bought at 50 Guineas, or leſs, and after I was out of my Clerkſhip, I was offered a Waiting Clerks Place in the Office for 50 Guineas. They are not ſworn, nor have Power to take a Clerk; and ſince that Time I have known them Sold for 3, 4, and 500 *l.* My Maſter was a ſworn Clerk, and he ſold his ſworn Clerks Place for 230 *l.* It was a Clerk at the Seat; and by the Cuſtom of the Office, he that hath one Clerk cannot take another till the firſt Clerk be provided for; but I having a Propoſal to go into a Seat of greater Buſineſs, that induced me to give a Note to the Gentleman that bought the Seat, that I would not be an Incumbrance on the Seat, otherwiſe he would not have given ſo much. Since that Time I have known a ſworn Clerks Place Sold for 800 *l.* Particularly I tranſacted a Sale upon a Brother-in-Law's Account, I contracted for 500 *l.* and then there was a Clerk upon the Seat that had not ſerved half his Clerkſhip out.

Mr. Serj. *Probyn.* What Sum of Money had they upon taking a Clerk at that Time, and what now?

Mr. *Steele.* I did treat in Order to put my Brother-in-Law Clerk to one Mr. *Atkinſon*, in the Office.

Mr. Serj. *Probyn.* What time was that?

Mr. *Steele.* To the beſt of my Remembrance it was in 1703, or 1704, and he had 100 Guineas. Since that time, my Brother-in-Law, while he was there, had 300 *l.* or 300 Guineas with a Clerk.

Mr. *Common Serj.* I deſire he may Explain to your Lordſhips what he means by a Clerk being an Incumbrance to a Seat?

Mr. *Steele.* By the Cuſtom of the Office, he that is put a Clerk, muſt be provided for before his Maſter can take another. The Maſter ſo taking him, cannot take another Clerk, till he is provided for by a ſworn Clerks Place, or a waiting Clerks Place.

Mr. *Lutwyche.* If the Councel have done, I deſire to ask one Queſtion, that is, The Gentleman ſays, he came into the Office in the Year 1687. I deſire to know how many Clerks there were at that Time?

Mr. *Steele.* There were at that Time but 60 ſworn Clerks; there was an Addition made, to the beſt of my remembrance, in my Lord *Jeffery's* time, Sir *John Trevor* was then Maſter of the Rolls, I think there was an Addition of 30.

Mr. *Lutwyche.* I deſire to know whether they are not reduced from 90 to 60 again?

Mr. *Steele.* They are not at preſent yet reduced.

Mr. *Lutwyche.* Whether they are not intended to be reduced?

Mr. *Steele.* If any one Dies without ſurrendring his Office, they don't fill up the Place of that Perſon with another; but any one may ſurrender.

Mr. *Lutwyche.* How many are there now?

Mr. *Steele.* I have been told there are about 12 or 13 leſs than 90: They are to be reduced

duced from 90 till they come to the ancient Number of 60; and they are reduced as they die without ſurrendring.

Mr. *Lutwyche.* We don't expect you to give an exact Account; How many may there be?

Mr. *Steele.* I can't take upon me to ſay how many; but, as I have been informed, I believe there are about 16 or 17 above the 60 remaining: I may be miſtaken, I am not certain; but there are ſeveral Gentlemen here, who can give an exact Account.

Mr. *Lutwyche.* I deſire to know whether the Offices are not a great deal better, by there being fewer of them?

Mr. *Steele.* Certainly, I believe that is pretty Natural; the fewer the Offices are the better; but the Offices are not ſo good as they were when I came Clerk. They have reduced ſeveral Profits belonging to them ſince I came out of the Office, by the Act of Parliament made *For the Amendment of the Law.*

Mr. *Lutwyche.* You ſay they are ſold for more than formerly they ſold for; I deſire to know whether ſome of thoſe Clerks, whoſe Predeceſſors have had good Buſineſs belonging to the Office, have not made that Seat ſell better?

Mr. *Steele.* Certainly it doth; if the Perſon ſurrendring had good Buſineſs, that Seat will ſell for more than a Seat of leſs Buſineſs

Mr. *Common Serj.* I deſire that he will inform your Lordſhips, when it was in point of Time that theſe Offices ſold at ſo low a Rate?

Mr. *Steele.* It was in the Year 1694 that the Gentleman to whom I was Clerk ſurrendered his Seat.

Mr. *Common Serj.* And when was it you knew 50 Guineas paid for the Place of a Waiting Clerk?

Mr. *Steele.* The 50 Guineas I ſpeak of for a Waiting Clerk's Place, was in the Year 87, or thereabouts.

Mr. *Common Serj.* Whether was that before the Increaſe of the additional Number of Clerks?

Mr. *Steele.* Much about the Time that the Additional Number of Clerks was added.

Mr. *Common Serj.* I deſire he would inform your Lordſhips, whether the Prices began to Riſe before any Reduction was made?

Mr. *Steele.* Yes, before the Reducing of them.

Mr. Serj. *Probyn.* When was the Reduction of them made?

Mr *Steele.* I can't tell the exact Time. There was an Order made, that they ſhould not be filled up as they died without Surrender.

Mr. Serj. *Probyn.* I deſire he may be asked, Whether there was not a Difference of Price between thoſe Seats which were full or empty of Buſineſs, or whether they were all at a *Par?*

Mr. *Steele.* The Price always varied, as there was much or little Buſineſs.

Mr. Serj. *Probyn.* But every Seat, whether great or leſs, had a Riſe in Proportion?

Mr. *Steele.* Yes.

Mr. *Cary.* I deſire he may be asked, Whether there hath not been an Act of Parliament ſince the Time he mentions, which hath been Beneficial to the 60 Clerks?

Mr. *Steele.* There was an Act of Parliament, called, *An Act for the Amendment of the Law*; by which the 60 Clerks had the Term Fees inſtead of the Tenour Bill, which was a conſiderable Profit; and to make up that to them, the Fees of the ſmall Writs were given to them, and the Term Fees; but in my Apprehenſion, the Tenour Bill was a greater Advantage than thoſe Fees that have been given in Lieu of it.

Mr. *Common Serj.* That worthy Gentleman's Queſtion hath occaſioned me to deſire, That he would inform your Lordſhips, Whether, upon the whole of the Act, the Six Clerks Offices are better or worſe?

Mr. *Steele.* In my Opinion, they were better before the Act, than they are now.

Mr. Serj. *Probyn.* My Lords, we have more Witneſſes to this purpoſe; but we apprehend that Mr. *Steele* hath ſpoken ſo fully to it, that we ſhall not trouble your Lordſhips with any others, as to this Matter. The next Witneſs which we ſhall beg leave to call, is in Relation to the two Sums of 1575*l.* that were paid into the Court of Chancery by the Noble Earl, for which we did call Mr. *Goldesbrough.*

Dr. *Sayer.* Before your Lordſhips enter into an Examination of this Fact, I will only beg leave to take Notice as to the Time of this Repayment: The Learned Managers were right in their Obſervations, That it was after the Vote for the Impeachment; but it was before the Articles were Exhibited. This is miſtaken in the Anſwer, but I am ſure the Honourable Houſe of Commons will be ſo candid as to think it was a Miſtake only, and that 'tis impoſſible it could be with any View of Deceiving the World, ſince both Facts were upon Record; the Earl was ſo very impatient to have his Anſwer in, that no Delay might be charged upon him, that I aſſure your Lordſhips the Anſwer was not ſettled till 3 or 4 a Clock in the Morning of that Day that it was delivered in. In ſuch a Hurry, a Miſtake of this Nature, I hope will not be taken amiſs, nor be looked upon by the Houſe as deſigned. My Lords, I thought it my Duty to obſerve this before your Lordſhips entred into this Examination.

Mr. *Goldesbrough* called.

Mr. *Common Serj.* There are two Sums of Money taken Notice of to be given by Mr. *Kinaſton* and Mr. *Bennet* to my Lord *Macclesfield*, I deſire you would inform my Lords, whether thoſe two Sums were paid back again, and when, and in what Manner?

Mr. *Goldesbrough.* My Lords, The 23d of *February* laſt my Lord *Macclesfield* came into Court, and depoſited in Bank Notes and Money to the Value of 3000 Guineas. The Lords Commiſſioners were pleaſed to direct the inveſting it in *South-Sea* Annuities, in the Names of Mr. *Holford* and Mr. *Lovibond*, the two Senior Maſters of the Court, for the Benefit of the Suitors of the Court.

Mr. *Common Serj.* I think, my Lords, we need not ask whether Mr. *Goldesbrough* be the proper Officer?

Lords. No, No.

Mr. *Common Serj.* I would with Submiſſion ask another Queſtion of Mr. *Goldesbrough*; I would beg leave to inform your Lordſhips what the Queſtion is. There hath been an Examination on the Part of the Gentlemen of the Houſe of Commons into the Nature of theſe Offices,

and I hope it will not be improper, Mr. *Goldesbrough* being now at Your Lordſhips Bar, to ask him as to the manner of the Money coming into the Maſters Hands, whether it be by Compulſion, or at the Inſtance of the Parties.

Mr. *Serj. Pengelly.* This muſt appear by the Order. No Money is paid in but by Order.

Mr. *Com. Serj.* The Orders are infinite, but Mr. *Goldesbrough* being the Regiſter, may be properly asked, what the Practice and Uſage of the Court is in this Inſtance. It is uſual to ask the Officers of the Court, what the Practice and Uſage of the Court is. If we ſhould produce 20 Orders, they might object that others are not ſo; and therefore I beg Mr. *Goldesbrough*, the proper Officer, may inform Your Lordſhips, what the Practice of the Court is.

Mr. *Goldesbrough.* Upon Decrees, when Cauſes are heard, the Councel pray what Decree is proper: Where Eſtates are to be ſold, they order the Money to be brought before the Maſter.

Mr. *Lutwyche.* My Lords, I deſire to ask one Queſtion; Mr. *Goldesbrough* is a very experienced Officer of the Court, hath been a good while in the Place, and probably may give Your Lordſhips ſome Light into this Matter. The Queſtion I would ask, is, When he firſt knew the Office, whether it was uſual to direct the Money to the Maſters, in the manner it hath of late been directed?

Mr. *Goldesbrough.* I can't ſay it was.

Mr. *Lutwyche.* The next Queſtion is, When the preſent Uſher of the *Rolls* had given Security, whether there were not ſome Orders made by the late Lord *Chancellor*, as well as by the Maſters of the *Rolls*, for Payment of Money to the Uſher of the *Rolls*; that is, into Court?

Mr. *Goldesbrough.* Yes, there was.

Mr. *Lutwyche.* I deſire him to explain the Difference between paying the Money into Court, and paying the Money to a Maſter. What is underſtood by paying it into Court?

Mr. *Goldesbrough.* Paying it into Court, is paying it to the Uſher.

Mr. *Lutwyche.* I deſire to know, whether there were not ſome Orders made, after Mr. *Trevor* the preſent Uſher had given Security, for Payment of Money to him?

Mr. *Goldesbrough.* Yes, there were.

Mr. *Lutwyche.* I deſire to know, how ſoon after thoſe Orders were varied?

Mr *Goldesbrough.* I can't remember when the Orders were varied; as to thoſe made before Hearing, and for continuance of an Injunction, I don't know they are altered yet.

Mr *Lutwyche.* What I ask is, Whether he had any Directions touching the varying of Orders, for the Payment of Money; any Direction, I mean, from my Lord *Macclesfield*, to vary the Order?

Mr. *Goldesbrough.* Money paid before Hearing, was paid into Court; Money paid upon the Decree, was brought before the Maſter. I had no Direction from my Lord *Macclesfield* to vary the Order.

Mr. *Lutwyche.* Was there any Variation or Difference in drawing up the Order, for ſome time after the Uſher gave Security, from what it was ſome time before?

Mr. *Goldesbrough.* Upon interlocutory Motions, the Money was brought before the Uſher, and ſo it hath been ever ſince.

Mr. *Lutwyche.* Was it always ſo?

Mr. *Goldesbrough.* It hath been ſo ever ſince.

Mr. *Lutwyche.* Ever ſince what time?

Mr. *Goldesbrough.* Ever ſince the time that Mr. *Trevor* gave Security.

Mr. *Lutwyche.* What I would know is, Whether the Orders and Directions at firſt were not in general, to pay the whole Money into Court?

Mr. *Goldesbrough.* No, my Lords.

Mr. *Lutwyche.* How was it?

Mr. *Goldesbrough.* On all Orders interlocutory before Hearing, it was paid in to the Uſher: On all Orders for Money, ſubſequent to the Hearing, it was brought before the Maſter.

E. of *Macclesfield.* This Queſtion hath been asked Mr. *Goldesbrough*, with relation to the paying of Money into Court, and being brought before a Maſter; I deſire he would inform Your Lordſhips what the Difference between them is?

Mr. *Goldesbrough.* Money brought into Court, is Money brought in before Hearing, and is ſubject to the Order of the Court, to be paid out either before the Hearing, or after, as the Nature of the Caſe requires. Money brought in after Hearing, is Money to be put out on Security, and is brought before the Maſter.

E. of *Macclesfield.* Whether when Money is ordered to be brought in to be diſpoſed of, as upon a Purchaſe, or upon a Decree, to pay Debts *&c.* The Courſe of the Court in all his Time hath been to bring it into Court, or before a Maſter?

Mr. *Goldesbrough.* I can't ſay it hath been ſo in all my Time: Since the Revolution it hath been generally brought in before the Maſter, before it was brought into Court.

E. of *Macclesfield.* Have the Orders made by me, ſince the Uſher gave Security, been made in the ſame manner as thoſe by my Predeceſſors?

Mr. *Goldesbrough.* Yes, They have been the very ſame.

E. of *Macclesfield.* I deſire to know, when firſt the Money paid into the Hands of the Uſher went into another Courſe, that is, upon the Uſher's Death, or not giving Security; and what Method was taken then?

Mr. *Goldesbrough.* I believe, after the Revolution, there was looked upon to be a Defect in the Security of the Uſher, and it was upon that Conſideration, that the Money was ordered before the Maſter.

E. of *Macclesfield.* And afterwards was there not an Alteration made of all the Money that uſed to be paid to the Uſher? Was it not ordered to be brought before the junior Maſters?

Mr. *Goldesbrough.* In my Lord *Cowper*'s Time, when there was a Difference between the Uſher and his Deputy, my Lord *Cowper*, upon that, did order the Money to be brought, and lodged in the two junior Maſters Hands. They were each to keep a Key, and the Uſher another: When any Money was paid, it was paid out of the Cheſt, kept under thoſe Keys; and the Money that was paid in, was paid in there.

E. of *Macclesfield.* Was not the Money that uſed to be paid in to the Uſher's Hands, directed in to the junor Maſters Hands?

Mr. *Goldesbrough.* It was ſo.

E. of *Macclesfield.* As to the Money appointed to be diſpoſed of, for payment of Debts, or otherwiſe, how was that paid? was that put into the Cheſt, or into the Hands of the reſpective Maſters, to whom it was referred?

Mr. *Goldesbrough.* I think it was put into the Cheſt; there was then no Difference at all.

E. of *Macclesfield.* Had no other Maſters then any Money brought before them? was all brought before the junior Maſters?

Mr. *Goldesbrough.* The general Order was, for the Money to be brought before the junior Maſters, to be kept in a Cheſt there.

E. of *Macclesfield.* Mr. *Goldesbrough* miſtakes the Queſtion. I don't ask how the Money was uſually brought, but had no other Maſter Money brought before him in my Lord *Cowper*'s Time?

Mr. *Goldesbrough.* Yes, My Lords.

E. of *Macclesfield.* What Money was that? upon what Occaſion?

Mr. *Goldesbrough.* The bringing the Money to the two junior Maſters, was found to be inconvenient; whereupon, after that it was altered, and the Money was brought before the Maſters, to whom the Reference was in Court.

E. of *Macclesfield.* Whether the Money that was paid in to the two junior Maſters, was not ſuch Money as was before ordered to be paid into Court?

Mr. *Goldesbrough.* Yes.

E. of *Macclesfield.* I deſire you would recollect, whether you was not preſent at a Meeting of the Maſter of the *Rolls*, and Uſher, and others; whether this was not under Conſideration, what Money ſhould be paid into Court, and what ſhould be brought before the Maſter?

Mr. *Goldesbrough.* Yes.

E. of *Macclesfield.* Whether you was not then asked, whether Money directed after a Cauſe is heard, to be diſpoſed of, was not brought before a Maſter?

Mr. *Goldesbrough.* Yes, I was asked that Queſtion.

E. of *Macclesfield.* What Account did you give of the Courſe of the Court in that Particular?

Mr. *Goldesbrough.* I gave the ſame as now, That the latter Practice had been to bring it before the Maſter, to whom the Cauſe was referred.

E. of *Macclesfield.* Do you remember, whether the Uſher was not asked, whether he had any Precedents of Money paid into his Hands, to be diſtributed amongſt Legatees, or Creditors, and what the Anſwer was?

Mr. *Goldesbrough.* He ſaid he had none.

E. of *Macclesfield.* Do you apprehend the Courſe of the Court to be, that Money brought in before Hearing, is to be paid in to the Uſher, and Money after Hearing, to be brought in before the Maſter?

Mr. *Goldesbrough.* Yes, I do.

E. of *Strafford.* I deſire he would inform Your Lordſhips, what the Security is, and how much, that is given by the Uſher; and whether it is the ſame now, as it was before my Lord *Cowper* made that Alteration?

Mr. *Goldesbrough.* I can't ſay any thing as to that, I know nothing of it, it doth not lye in my Province.

Mr. *Serj. Probyn.* Your Lordſhips will pleaſe to remember, in the Caſe of Mr. *Elde*, though he paid 5250 *l.* all the Money was returned, except 1850 *l.* So the ſame as to Mr. *Thurſton*, 5250 *l.* that all was returned in a reaſonable Time, except 2000 *l.* ſo that to theſe Facts, we ſhall not trouble Your Lordſhips with any Witneſſes. But now we ſhall beg leave to lay before Your Lordſhips another Evidence, that when Mr. *Thurſton* was admitted into this Office, upon the Payment of 5000 Guineas, another Gentleman offered 6000 *l.* Mr. *Cottingham* proved the ſame as to Mr. *Elde*. This we do to ſhew, that his Lordſhip was not that avaritious Perſon, as he hath been repreſented; he refuſed 6000 *l.* and took leſs from another. We deſire Mr *Ellis* may be called.

Mr. *Ellis* Sworn.

Mr. *Serj. Probyn.* We deſire Mr. *Ellis* may be asked, what he knows of any Sum of Money that was offered for the Maſterſhip in *Chancery*, to which Mr *Thurſton* was admitted, and what that Sum was?

Mr. *Ellis.* Upon the Death of Mr. *Borret*, Mr *Richard Lucas* came to me at my Lord *Macclesfield*'s, and told me, That his Brother deſired to have the Place of a Maſter in *Chancery*, then vacant: And he ſaid, that as I was in my Lord *Macclesfield*'s Family, I might be of Service to him, in conveying Mr *Lucas*'s Propoſal to my Lord. He then told me, what I was to offer my Lord *Macclesfield* for that Place; he ſaid he was ſo ſenſible of my Lord *Macclesfield*'s Honour and Generoſity, that he would leave it entirely to his Lordſhip, what he would have in Conſideration of his coming in. But if my Lord *Macclesfield* did not approve of a Propoſal ſo undetermined as that was, I was to offer 6000 *l.* or 6000 Guineas; I don't remember which of thoſe two Sums, but one of them I am certain it was. I did offer it to my Lord, who told me Mr *Lucas* had been well recommended to him, and he was ſatisfied with his perſonal Character, and with this Offer. My Lord *Macclesfield* ſaid no more; and I could not preſs his Lordſhip to explain himſelf any further. I returned that Anſwer to Mr *Lucas*, and heard nothing further of that Matter, till my Lord *Macclesfield* had declared that Mr *Thurſton* ſhould have it.

Mr. *Com. Serj.* I deſire he may be asked, whether the Gentleman that applyed to him, was not his Friend and Acquaintance?

Mr *Ellis.* Mr *Richard Lucas* was my Acquaintance; when he deſired me to do this, I told him it was not proper for me to apply about Matters of ſuch Nature; but in Friendſhip to him, I would ſpeak to my Lord about it.

Mr. *Plummer.* I don't know whether the Councel have done; if they have, I deſire to ask this Witneſs what Mr. *Richard Lucas* is himſelf?

Mr. *Ellis.* He is a Clergyman.

Mr. *Plummer.* I deſire to ask him, If Mr. *Richard Lucas* did not, at the ſame Time that he propoſed the 6000 *l.* lay ſome Reſtriction or Condition, upon which he was to pay it. Had not you ſuch Inſtructions?

Mr. *Ellis.* No, I don't remember he did any.

Mr. *Plummer.* Then I deſire to ask you, If he did not ſay, provided Mr. *Borret*'s Deficiency was made good?

Mr. *Ellis.* He mentioned no ſuch Condition to me; he did ſpeak of Mr. *Borret*'s Deficiency; I told him I had heard there would be no Deficiency there. Upon which he ſaid, he had been aſſured there would be none by a Gentleman known to us both; but however that be, ſays he, my Brother is willing to enter into a Treaty with my Lord *Macclesfield* upon thoſe Terms.

Mr.

Mr. Serj. *Frobyn.* My Lords, we ſhall trouble your Lordſhips no further upon theſe Articles we have been upon, the other Gentlemen will anſwer what is to follow.

Mr. *Robins.* May it pleaſe your Lordſhips, I am likewiſe by your Lordſhips Permiſſion aſſigned of Councel with the noble Earl, who has the Misfortune to lye under the Weight of ſo heavy a Charge, as an Impeachment of the whole Body of the Commons of *Great-Britain*, and ſhall beg Leave to open to your Lordſhips the Nature of his Defence, and the Strength of his Evidence, with regard to the *Eleventh* and *Twelfth* Articles of this Impeachment.

I am ſenſible, my Lords, that the Solemnity of this Proſecution, from the Weight and Number of thoſe, who are become the Accuſers of this noble Earl, and the awful Appearance and Wiſdom of thoſe who are to be his Judges, and the Name of an Impeachment in Parliament, may ſeem to carry an Argument of greater Crimes and greater Guilt, than are to be met with in the ordinary Courts of Juſtice below.

But, my Lords, with the greateſt Submiſſion, if the Solemnity of the Proceedings on this Occaſion has not altered the Nature of Things, and imprinted a Guilt where there is no Guile, we humbly hope we ſhall be able to lay before your Lorſhips ſome few Obſervations and Circumſtances of Evidence, that will, at leaſt, extenuate, if not wholly abate and take out the Sting and Malignity of the ſeveral Crimes, whereof this noble Earl ſtands accuſed.

Your Lordſhips, without Queſtion, will have long ſince obſerved, That the Loſſes and Sufferings of Widows, of Orphans, and others, who, from the Diſtreſs and Impotence of their Condition to help or defend themſelves, have fled to the Court of Chancery, when this noble Earl preſided there, for Sanctuary and Protection; that theſe have been juſtly made uſe of as the greateſt Aggravations of the Crimes wherewith he is charged, and they have been diſplayed with the utmoſt Force of Eloquence, and in the moſt moving Strains of Commiſeration and Pity.

And I believe, my Lords, every one that heard them have ſhared and gone along with the Honourable Managers for the Houſe of Commons, in the Concern and Indignation they have ſo juſtly ſhewn towards thoſe, who have been the Authors and Contrivers of them.

Theſe, my Lords, are Subjects, wherein the richeſt Fancy may almoſt loſe it ſelf, and the pooreſt can never be at a Loſs for ſomething to offer to move and affect the Paſſions of Mankind.

And the learned Managers for the Honourable Houſe of Commons, have adorned and ſet off their Charge againſt the noble Earl on this Head, with ſo many Beauties of Expreſſion, and ſo great a Propriety and Choice of Language, to engage and win over all the Paſſions of Humane Nature to their Side, that 'twill be difficult, if not impoſſible, for Us, who may ſeem to have undertaken an Argument leading to diſprove and reaſon againſt the Force and Truth of all theſe, to hope for Succeſs, but by ſhewing to your Lordſhips, that the noble Earl entirely joins with the learned Managers in their juſt Reſentment and Concern on this Occaſion, that he is deeply affected with the Loſſes, the Depredations and the Havock, which has been made of the Fortunes of the Unhappy Suitors of the Court of Chancery.

That he has long been endeavouring to put a Stop to them, that at one Time he has contributed his Reaſon, his Judgment, and his Underſtanding, to find out effectual Methods for the Cure of them; at other Times has made Uſe of his Power, his Authority and that Majeſty wherewith, as Lord Chancellor, he ſeems to be inveſted, to enforce and haſten the compleating of them.

That he has conven'd the Maſters, the Regiſters, and the ſeveral Officers belonging to his Court, to conſult, adviſe and aſſiſt, in finding out Means to ſtop the growing Evil; that he has aſſiſted with his Purſe, has advanced conſiderable Sums of Money of his own, and when Nothing would do, when the Miſchief appeared too big for his ſingle Endeavours to oppoſe, that he then at laſt preſumed humbly to lay the Whole before his Majeſty in Council, as well for his Majeſty's Aſſiſtance and Direction, as to teſtify how much he had at Heart the finding out a Remedy for the Cure of thoſe overgrown Diſeaſes, this Epidemical Contagion, which was ſpreading through every Part of the Court where he preſided, and ſeemed to threaten Deſtruction and Ruin to the whole.

Theſe, my Lords, we humbly hope will prove the noble Earl not to have been an idle and unconcerned Spectator at the Tragedy that was acting around him; that he ſaw and felt the Commotions it had raiſed, and was fully determined to put an End to them as ſpeedily and effectually as he could.

But when, my Lords, a Stop was put immediately to his Endeavours; when he was diſarmed almoſt in the very Beginning of his Onſet, and when the great Seal, and therewith his Power to proceed further, was taken from him, your Lordſhips will not impute it to him, that he was forced to ſit ſtill, and leave it to others to effect what he had, ſo proſperouſly and happily, begun.

Your Lordſhips, without Queſtion, will have already obſerved, That theſe fatal Miſchiefs did not ſpring up all at once, That they had long been growing, That the Seeds of them had lain buried and concealed for a conſiderable Time, and, That they hardly appeared at all, till they were grown too ſtubborn and obdurate, to yield to an eaſy Cure.

Your Lordſhips will likewiſe, no doubt, have obſerved, that however in the ſtricteſt way of conſidering Things, the Chancellor may poſſibly be thought to be anſwerable for them; yet, that they did not originally proceed from him, that he had not the immediate Cuſtody or Ordering of the Suitors Money or Effects.

That the Maſters in Chancery, who are no leſs than Eleven in Number, by the Conſtitution of the Court, and the Nature of their Office, were neceſſarily to be entruſted with that Part of the Buſineſs thereof.

And when Your Lordſhips ſhall likewiſe be pleaſed to obſerve further, That enough, and more than enough for the ſtrongeſt Conſtitution of Body, and the greateſt Abilities both of Mind and Underſtanding, remained ſtill for the Chancellor's own Share, in the Diſpatch of the daily and neceſſary Buſineſs of the Court where he preſided, the innumerable Avocations, by his Attendances on Your Lordſhips, on His Majeſty, and the Council, and other Services, which the Duty of his High Station required from him; Your Lordſhips, no doubt, will

will eaſily reflect, that he had but little leiſure, ſuddenly, and immediately to go through ſo arduous, ſo difficult, and ſo tedious an Undertaking, as the ſtating and ſetling of the Maſters Accounts, for no leſs than almoſt a Million of Money, which has now appeared to be in their Hands. And, your Lordſhips, we are perſuaded, are no ſtrangers to the many and almoſt inſuperable Difficulties, which even at laſt have attended the Proſecution of that Affair, the great length of Time it has taken up, the number and variety of Meetings and Conſultations with Perſons of the greateſt Abilities and Experience, to go to the bottom of it, and whether even yet they have been able fully to effect it, or have fix'd on ſuch Methods of Enquiries as have laid open the whole Scene, or will certainly prevent the like Miſchiefs for the time to come; theſe, my Lords, we humbly apprehend are Conſiderations that will not be thought altogether unworthy of your Lordſhips Notice, in determining the Guilt or Innocence of this noble Earl of the Crimes laid to his Charge.

It muſt indeed be admitted that they have for the preſent, taken away the Money, Effects, and Securities of the Suitors out of the Maſters Hands, and ſo have prevented any loſs for the time to come on their Part.

But whether, my Lords, they are even yet diſpoſed of in ſuch Manner as fully to Anſwer the Ends propoſed, whether the Eaſe and Convenience of the Suitors of the Court will appear to be more effectually provided for, than they were before, by the Methods that have now been taken to diſpoſe of their Money and Securities; theſe, my Lords, I am afraid are Queſtions more eaſily asked, than anſwered.

But, my Lords, all I would be underſtood to mean by this, is, and I mean nothing more by it, than that the ſettling and adjuſting of the Maſters Accounts for ſuch great Sums of Money, placed and diſpoſed of in ſuch variety of Hands, ſo difficult to be throughly conſidered or underſtood; and ſo little to be depended on if they were underſtood; that this, my Lords, was rather the work of Perſons at full leiſure, of Perſons converſant in the Nature and Manner of Accounts, that 'twas the work of variety of Perſons of different Capacities and Abilities, and ſo the taking of theſe Accounts lately has abundantly verified and proved them to be.

And then, my Lords, we humbly hope that the ſingle Endeavours of a Chancellor to the ſame end, by being unſucceſsful, will not be made Criminal, and that he will not be obliged under the pain of an Impeachment in Parliament, to do what, with the greateſt Submiſſion, has never yet been attempted, or if attempted, has met with the ſame ill Succeſs with the Endeavours of the preſent Earl, and could never hitherto be compleatly or perfectly effected.

But, my Lords, with great Submiſſion, if the ſtating and ſettling of theſe Accounts, on a juſt and laſting Foundation, ſhould be admitted to be the Duty and Office of a Lord Chancellor, and that he is bound under Pain of an Impeachment to take care of them, yet as this is a Work of the greateſt Moment, Judgment, and Conſideration, and muſt unavoidably take up a very great portion of Time, and put a total Stop and Obſtruction for the preſent to all the other Branches of his high Office, we humbly hope, my Lords, that his being cut off in the midſt of his Endeavours of that kind, and thereby prevented from further Purſuit of them, that this will be a Conſideration of the greateſt Weight with your Lordſhips in determining the Fate of this noble Earl, and that he will not be made Criminal for leaving it unfiniſh'd, when his Power of proceeding further therein, was ſuddenly and unexpectedly taken from him.

My Lords, your Lordſhips very well know that the Buſineſs, not only of the Court of Chancery, but of all the other Courts of *Weſtminſter-*Hall, and even of your Lordſhips Supream Court of Judicature, is, and muſt neceſſarily be diſtributed and diſpoſed of into variety of Hands, that ſome are aſſigned to one Province, ſome to another, and all of them concurring to the ſame End, the carrying on the Buſineſs of the reſpective Courts to which they belong.

And, my Lords, the Officers and Miniſters of each of theſe Courts of Juſtice, on their being admitted thereto, give each of them the ſecurity of an Oath, or ſome perſonal Security for the due and faithful diſcharge and execution of their Duty, whilſt they continue in their Offices.

Now, my Lords, what can be the End of requiring and reſting on theſe Securities, but to relieve and eaſe the Minds of their Superiors from the neceſſity of prying and examining daily into their Behaviour and Conduct, to the hindrance and neglect of their own greater and more immediate Duty?

The Officer is at the Peril of his Oath, or the Security he has given, nay, even at the Peril of the Office itſelf, to diſcharge his Duty as he ought, and juſtly forfeits his Office by a neglect or breach of any part of his Duty therein; and if one or two of them ſhould have no regard to all or any of theſe Tyes, muſt the ten Righteous that are left, nay, muſt the Chancellor himſelf be puniſhed for their Sakes?

But, my Lords, Maſters in Chancery are generally, if not always, choſen from the Profeſſion of the Law, and the manner of their Education and the nature of their Studies are juſtly ſuppoſed to ſet them above the Temptation of mean, of baſe, or little and unjuſt Actions.

Many of that Profeſſion your Lordſhips will permit me to obſerve, do now, and have in all Ages, worthily adorn'd even the Auguſt Body of the Houſe of Peers, and have been advanced to the higheſt Dignities in the State.

And then, my Lords, I humbly hope 'twill not be thought an Obſervation altogether improper, that when one of this liberal Education, when one brought up in the ſtudy and practice of a Profeſſion, whoſe very Principles conſiſt in the knowledge of Virtue and Honour, of the Rules of Juſtice and Equity, and all the Accompliſhments which can adorn Life, or make him uſeful to his King and Country; I ſay, my Lords, I humbly hope 'twill not be improper to Obſerve, that when ſuch a one applies for an Office in the Civil Government, which he is in any Degree qualify'd for, 'tis no wonder that he ſhould meet with a more favourable Reception than other Perſons, who perhaps may have nothing but their Eſtates or Fortunes to recommend them.

The very Profeſſion of ſuch a one is, my Lords, almoſt a ſufficient Security and Recommendation of itſelf, and immediately induces a Perſuaſion and Belief, that they will do nothing to forfeit their Honour, their Reputation, or that Credit and Eſteem, which they ſo juſtly do and ought to Regard and Value.

But when, my Lords, 'tis remembred that the additional ſecurity and ſanction of an Oath is likewiſe required from them, when they invoke the Majeſty of Heaven to Bleſs them as they perform their Duty, what higher, what greater or better Security can be taken from them for the due and faithful diſcharge of their Duty in the Office they are entring upon?

The Oaths they take upon that Occaſion, your Lordſhips have already heard, and no doubt will have obſerved, that they differ little from the Oath, which even the Lord Chancellor himſelf takes on his being admitted to his own high Office.

And as they ſit with him in Judgment on the Bench, ſhare with him in carrying on the moſt important Buſineſs of that Court, which is next in Dignity to the Supream Court of Judicature we are now before, when they are in moſt Caſes neceſſary for the diſtributing and dealing out Juſtice and Equity, and fixing the rules and bounds of Property to the Suitors there. Can it, or will it, my Lords, be eaſily or readily imagined, that they ſhould have no Regard to all theſe ſacred Tyes of Duty, that they ſhould proſtitute their Honour, their Conſcience, and every Thing that is dear and valuable to them, for the ſake of any worldly or temporal Conſideration whatſoever?

Theſe, my Lords, we humbly apprehend are ſome of the Reaſons, which may be offered, why no perſonal ſecurity has ever been required from a Maſter in Chancery, on his Admiſſion into that Office, any more than from the Chancellor himſelf.

And if this be ſo, tho' there could be no need, or occaſion for the Chancellors making any Declarations concerning their Ability or Subſtance, yet we humbly hope we ſhall be able to ſhew to your Lordſhips, that this Declaration, which is made one of the Articles of an Impeachment againſt this noble Earl, that even this too, was not without it's juſt Foundation of Reaſon and Truth.

And this, my Lords, leads me to obſerve a little on the Eleventh Article of this Impeachment.

[*Article* XI.] My Lords, the Eleventh Article contains a two-fold Charge againſt the Earl; Firſt, That whilſt he continued in the Office of Lord Chancellor, in order to advance and increaſe the illegal and corrupt Gain ariſing to himſelf from the ſale and diſpoſal of the Offices of Maſters in Chancery, he did admit ſeveral Perſons to thoſe Offices, who at the time of their Admiſſions were of ſmall Subſtance and Ability, unfit to be truſted with the great Sums of Money and Effects of the Suitors lodged in their Hands.

The Second Charge againſt the Earl in this Article, is, That he did publickly in open Court falſly repreſent the Perſons by him admitted to the Offices of Maſters of the Court of Chancery, as Perſons of great Fortunes, and in every reſpect qualified for the Truſt repoſed in them.

Theſe, my Lords, are the two Branches of this Article againſt the Earl, and I would beg leave to obſerve upon it in general, that 'tis not ſo much as charged or inſinuated in any part of it, that the Earl knew or had the leaſt Notice of any inſufficiency or inability in the Maſters at the Time he admitted them to take upon them that great Truſt.

If that had been the Caſe, or could have been clearly made out, the Commons without doubt would not have omitted ſo material an Aggravation of this part of their Charge againſt the Earl.

They have indeed proved, that the Earl did not think fit to take the Maſters own Words for their Abilities and Fortunes, and therefore never ask'd them the Queſtion.

But, my Lords, we hope we ſhall be able to ſhew to your Lordſhips, that the Earl took a much more proper and effectual Method, to be ſatisfied of the Truth of their Circumſtances and Abilities, than by any Appeal he could have made to themſelves; that he did not content himſelf with barely asking the Queſtion for the ſake of an Anſwer, which he ought to have had no regard to, whether true or falſe, but that he weighed, conſidered, and judged of the Account he received of them on his Enquiry from others, and determined accordingly, whether they were or were not fit to be placed in an Office of ſo great Truſt.

That in Conſequence thereof, he abſolutely rejected ſome, though their Friends offered him a greater Preſent, or if it muſt be called ſo, a greater Price for their Offices than others, for want of an Eſtate or Fortune in Poſſeſſion of their own, that might be ſome ways adequate to the great Charge they were going to be entruſted with.

That from the ſame Views of Security to the Suitors of the Court, he refuſed to admit others, from an Apprehenſion that the Sums they offered, though conſiderably greater than was offered by others, would too much exhauſt and leſſen their own Fortunes, to be able with any Degree of Eaſe or Credit to ſupport themſelves, or be conſiſtent with the Safety and Security of the Suitors Money and Effects, to be entruſted with them.

Theſe Inſtances, my Lords, we ſhall be able to produce to your Lordſhips; and when we have ſo done, we hope we ſhall need to be in very little Pain for the Second Part of this Charge, which the Earl by his Anſwer has partly admitted to be true, that is, that he believes he may upon ſome Occaſions have declared, That he thought the then Body of Maſters as good, with Reſpect both to their Eſtates and Ability for the Diſcharge of their Office, as had been at any Time before.

This, my Lords, the Earl owns by his Anſwer, That he may on ſome Occaſions have ſaid; and if it were true, where was the Crime of it? 'twas indeed more than he needed to have ſaid, as no One had Authority to require him to make any Declaration at all about the Maſters.

But, my Lords, if he ſaid more than he needed to have ſaid, and yet his ſaying was true; we hope, my Lords, that will never be imputed to him as criminal.

Indeed, my Lords, the Honourable Managers for the Houſe of Commons, both in their Opening, and the Courſe of their Evidence, have tack'd to this Declaration a Circumſtance ariſing from the Death of Mr. *Fellows*, one of the Maſters, which happened juſt before this Declaration was made, from whence they would infer, and one of them was pleaſed to ſay, 'Twas a neceſſary Declaration to be made at this Time, to give Notice that the Office was worth buying, or to that Effect.

But

But, my Lords, we humbly hope, how ingenious ſoever the Obſervation may be, that it will have no Weight with your Lordſhips, if the Truth and Nature of the Caſe it ſelf will ſupport the Declaration that was made upon that Occaſion.

But, my Lords, before I leave this Article, I would beg Leave to add one Obſervation more to what I have already ſaid upon the firſt Part of it, concerning the Obligation on the Maſters in Chancery to be faithful in the Diſcharge of their Duty, from the Honour of their Profeſſion, and the Nature and Sanctity of the Oath they take on their being admitted Maſters.

And, my Lords, I the rather chuſe to take Notice of it, becauſe 'tis an Argument, which the Honourable Managers for the Houſe of Commons have themſelves furniſhed us with.

Your Lordſhips were pleaſed to obſerve, That in the very Beginning of their Evidence, they took great Care and Pains to exalt and dignify the Office of Maſters in Chancery as high as poſſible, and therefore they read to your Lordſhips ſeveral Commiſſions, and put in others to the Table, from the Time of *Edward* the VIth, down to this Time, to prove, That the Maſters in Chancery were joined in Commiſſion with the Maſter of the Rolls, and the Judges themſelves, for the hearing and determining of Cauſes in Equity, in the Abſence of the Chancellor

And 'twas ſaid by one of the learned Managers in the firſt Day's Opening upon that Occaſion, That the Maſters in Chancery were next in Power to the Chancellor himſelf, after the Maſter of the Rolls.

From which I would humbly preſume to infer, That if this be ſo, if they are Perſons of ſuch Eminence and Worth, and ſo nearly related to Juſtice it ſelf, on their commencing Maſters, 'tis ſtill a higher Obligation on them to be careful in the Diſcharge and Execution of their Office; and then, whether theſe Conſiderations, whether the Tyes of Honour, of Conſcience, and of the Venerable Company they are from thenceforth joined with, and made equal to ; whether theſe may not in a great Meaſure be ſuppoſed to ſuperſede that ſtrict Enquiry, which a Lord Chancellor would otherwiſe think himſelf obliged to make ; this, my Lords, we humbly hope will not be thought an Argument altogether foreign to the preſent Queſtion before your Lordſhips, but will, we hope, at leaſt extenuate, if not wholly wipe off any Guilt, that for want of ſuch Enquiry might poſſibly be imputed to the Earl on his Admiſſion of Maſters.

But, my Lords, there is one Obſervation further, which I cannot let paſs on this Occaſion, though 'tis not ſtrictly to the Article I am now upon.

And that is, my Lords, what the ſame learned Manager obſerved in his Reaſoning upon that Point That the Offices of Maſters in Chancery being Offices of ſuch great Truſt and Dignity, that no Offices were more improper to be bought and ſold than they, except thoſe of the Judges themſelves.

This, my Lords, might, and no doubt, was a very juſt and proper Obſervation to be made, in ſupport of the Point they were then endeavouring to maintain.

But, my Lords, it falls out very unfortunately, to diſparage and weaken another Part of their Articles, which, without doubt they have equally at Heart to maintain, and that is the obliging theſe great Men theſe Judges, theſe Maſters in Chancery, to give Security for the Suitors Money and Effects in their Hands, as if they were not fit otherwiſe to be truſted with them.

They are juſt before made a ſort of Petty Chancellors, equal in Dignity and Power to the Judges themſelves, and fit to be entruſted with the Diſpoſal of the Properties and Fortunes of all the Suitors of the Court of Chancery, and therefore their Places muſt not be bought or ſold ; but here they are reduced and abaſed to the low and ſervile Condition of a common Receiver or Rent-Gatherer, and muſt give Security for all the Suitors Money or Effects that ſhall happen to come to their Hands for fear they ſhould run away with it.

All, my Lords, I ſhall preſume to add further under this Head, is, That though one of the Maſters has indeed frankly owned, That he was worſe than Nothing when he came into his Place of a Maſter in Chancery, yet from another part of his Evidence, he owns, and it fully appears, that he groſsly abuſed and impoſed upon the Earl in concealing it from him, of which the Earl, when he came to have Notice, very juſtly complained and expreſſed his Surprize and Reſentment, that he ſhould pretend to come into an Office which he was not able to pay for.

And how far the ſame Gentleman will in time to come remember the kind and generous Return made him by the Earl, of the Fifteen Hundred Guineas, when he came to find him in Diſtreſs afterwards for want of it : This, my Lords, muſt be left to his own Conſcience, and the Gratitude of his own Heart ; as muſt alſo the like Return of Fifteen Hundred Guineas made to another of the Maſters under the like Diſtreſs and Inability to bear the Want of it ; Theſe, my Lords, are Inſtances of the greateſt Generoſity, Honour and Tenderneſs, I had almoſt ſaid Charity, in the Noble Earl, that perhaps can be produced in Private Life on the like Occaſions, however, they have been diſfigured and diſguiſed, by the Learning and Ingenuity of the Honourable Managers for the Houſe of Commons.

In the mean time, my Lords, I would beg leave to obſerve, that the ready Paying and Producing of theſe Sums to the Earl, for their Places at firſt, their not giving him the leaſt Notice or Intimation that it was not their own Money, and the Figure and Appearance they made in the World; theſe all concurring might eaſily miſlead the noble Earl into a Perſuaſion and Belief, that they really were what they appeared to be ; that they were well able and ſufficient to bear the Expence of it. And neither of theſe Two, or of the other Maſters have given any Sort of Evidence, that the Earl knew, or had reaſon to entertain the leaſt Suſpicion to the contrary : And if now, at laſt of all, the Deficiencies of theſe, and of all the other Maſters placed in by the Earl ſhall appear to have been already made good, or to be ſo far ſecured, as to prevent any Danger of a Loſs to the Suitors of the Court, from their ſeveral Offices (which we humbly hope, on the ſtricteſt Examination, will appear to be the Caſe) We may then humbly preſume to hope, that the Earl will not be thought to be Criminal under any Part of this Article ; but that Your Lordſhips great Juſtice will acquit him wholly of it.

[*Article* XII.] But, my Lords, I would now humbly beg leave to offer a few Words and Obſervations on the Twelfth *Article*, which comes next to be conſidered of.

This

This, my Lords, charges that whilſt the Earl was Chancellor, an unjuſt and fraudulent Method was practis'd in the Court of *Chancery*, on the Sale of Maſters Places, and on the Admiſſions of new Maſters; that the Sums agreed to be paid for the Purchaſe thereof, were paid out of the Suitors Money, either by way of Retainer, or by replacing the ſame again, in the Hands of the Selling Maſter, immediately after the Admiſſion of the new one: And that by this Practice the Price and Value of theſe Places was greatly advanced, and Perſons of ſmall Ability and Subſtance were encouraged to contract for the ſame, which has occaſioned great Deficiencies.

This Part, my Lords, ſhews only the Contrivances amongſt the Maſters themſelves, how to get into thoſe Offices; and ſo far the Earl ſeems to be but little concerned in it.

But then comes the Charge againſt the Earl, that though this Practice was notorious and publick, and the Earl was fully acquainted therewith, yet, for his own unjuſt and corrupt Profit, in the Selling of thoſe Places, he took no Meaſures to prevent or reform that Abuſe, either by cauſing Schedules to be taken of the Money and Effects of the Suitors, delivered over to the new Maſter, or by appointing any Perſon to ſuperviſe or inſpect the Transfer, and Delivery thereof: But on the contrary, ſuffered that fraudulent Practice to continue without controul, whereby great Embezzlements have been made of the Suitors Money and Effects.

My Lords, the noble Earl, by his Anſwer, ſays, That he was totally ignorant of this Practice amongſt the Maſters; but admits, that he never gave any particular Directions for Delivery of the Suitors Money and Effects, by a Schedule to the ſucceeding Maſter; and ſays, he never heard that his Predeceſſors ever ordered ſuch Schedules to be made; but ſays, he believes ſuch Schedules were made, between the new Maſter and the old, on the general Order of Transfer, made of Courſe on the Admittance of the new Maſter.

This, my Lords, is the Earl's Anſwer to this Article. And as he has in general denied his Knowledge of theſe Practices amongſt the Maſters, it was certainly expected by Your Lordſhips, that the Honourable Managers for the *Houſe of Commons*, would have fully proved it upon him, and thereby have falſified his Anſwer to this Part of the Charge.

But, my Lords, if I did not greatly miſtake the Evidence to this Point, it has proved nothing more, than that the Earl knew of this Practice, at the ſame time that all the reſt of the World did, that is, a little before *Chriſtmas* laſt; when the Curtain drew up, and diſplay'd the Maſters in their true Colours.

Then it was, and not before, that the Earl was let into this Secret by the kind Aſſiſtance and Help of Mr. *Thomas Bennet*, and the Affidavits that were made by him and others on that Occaſion,

But, my Lords, with great Submiſſion, the Earl's knowing of it at that time was a little too late for him to give any Orders for preventing or redreſſing it for the time to come; for the great Seal was taken from him ſometime before, and then all his Knowledge after could be of no uſe to him, but only to ſhew how treacherouſly he had been dealt with, in not being let into this uſeful Part of Learning, whilſt it might have done him any good.

And, my Lords, if this be ſo, as it can be no ways Criminal in the Earl not to put a Stop to a Practice he was wholly ignorant of, and which the Maſters kept private amongſt themſelves, We humbly hope, how ill ſoever the Maſters may be thought to have deſerved of this noble Earl, that the Earl himſelf will not be thought to have deſerved ill of Your Lordſhips, in not endeavouring to prevent it; and that in Conſequence thereof, Your Lordſhips great Juſtice will acquit him of this Part of the Impeachment.

And, my Lords, As to the laſt Part of this Charge, the not cauſing proper Schedules to be taken of the Suitors Money and Effects, delivered over to the ſucceeding Maſter, as a Method, which might in all probability have prevented the Practices amongſt the Maſters, complained of in the firſt Part of this Article; this, my Lords, we humbly apprehend, neither can, nor is intended, even by the Articles themſelves, to affect the Earl further or otherwiſe, than as a Means he ought to have made uſe of, to put a Stop to theſe dangerous Contrivances, formed and ſet on foot amongſt the Maſters, to diſpoſe of their Places to the beſt Advantage.

But, my Lords, If the Earl himſelf knew nothing of theſe Contrivances, if he was wholly a Stranger to, and unacquainted with the Miſchief, 'twill ſurely, we hope, be no Crime in him, that he did not look out for a Cure.

But, my Lords, It may, perhaps, be worth while, juſt to conſider of the wonderful Diſcovery that ſeems to have been made of theſe Schedules, and how far they would have anſwered the Ends propoſed, admitting the Earl had known of theſe Practices amongſt the Maſters and had been better diſpoſed than the *Commons* are pleaſed to think he was, for the Remedying of them.

And, my Lords, I am afraid this would have proved very far from being an infallible Method of remedying theſe Evils for the time to come; for, my Lords, if the Maſters would but truſt one another, or any Body would truſt them for a very few Days, might they not have done juſt the ſame thing they did before? might they not have immediately replaced the Money again in the Hands of the Selling-Maſter? or have paid off a Bond or any other Security they had given on the Borrowing of the Money, as ſoon as ever they were admitted, and had got the Suitors Money into their Hands? And if they had ſo done, and this had been diſcovered and complained of, would it not, with great Juſtice, have been called inſtituting a trifling and fallacious Method of Security for the Suitors, which could do them no manner of Service, but tended only to amuſe and deceive them; and then whether this would not have made a better Figure in an Impeachment, than what is here fixed upon, may we humbly hope, be thought deſerving of Your Lordſhips Notice; eſpecially, my Lords, when it might have been ſo eaſily explained and urged as no doubt 'twould have been by the learned Managers, that the very taking of theſe Schedules was for the ſake of ſeeing into the Nature and Value of the Office to be ſold, that he might the better know how to ſet his Price upon it.

But, my Lords, I ſhall only beg leave to add one or two very ſhort Obſervations more upon this Head, and then call ſuch Witneſſes, as we have, to ſpeak to theſe two Articles.

And, my Lords, the firſt Obſervation I would beg leave to mention, is, that the Earl by his Anſwer

ſwer owns that he did not, neither did he ever hear, that any of his Predeceſſors ordered ſuch Schedules to be made; neither is there the leaſt Proof on the Part of the Honourable Managers for the Houſe of Commons, that any ſuch Schedules ever were made, or thought of, 'till Mr. *Lightboun* very happily hit upon them.

Indeed, the Earl owns by his Anſwer, that he believes ſuch Schedules were uſually made between the Old Maſter and the New, on the General Order of Transfer made of Courſe in the Admittance of the new Maſter.

But, my Lords, theſe are not the Schedules the Articles mean, as I apprehend, or, if they are, the Earl at leaſt was to have one Part of them; or elſe they could be of no Uſe to him in guarding againſt any fraudulent Practices of the Maſters. And if he had had one, what Security that could have been to the Suitors of the Court, if the Maſters ſhould have been diſpoſed to make Uſe of their Money afterwards; this, my Lords, I have already endeavoured to conſider of.

The next Obſervation, my Lords, I would beg leave to make under this head, is, That if ſuch Schedules had been made, what Security would this have been to the Earl, that they were in all Reſpects true, or with any certainty to have been depended on?

Some, my Lords, even of the Maſters themſelves, in the Hurry they were lately obliged to give in their Accounts, diſcovered afterwards ſeveral Miſtakes and Omiſſions therein; and though they were given in upon Oath, yet on a Review, and a more narrow and careful Inſpection and Examination of them, 'twas found they were not altogether to be relied on; and therefore the Maſters were forced to ſet them right in their Poſt-Accounts, given in at ſome diſtance of Time after; and whether any, or what other, or better Security for the Truth of thoſe Accounts has been yet found out, I am wholly ignorant of.

My Lords, the Third, and laſt Obſervation, I would beg leave juſt to mention, and ſubmit to your Lordſhips under this Head, is, Whether there be any, and what real Miſchief in the Practice it ſelf, ſo grievouſly complain'd of in this Article?

It is, my Lords, notorious, That in every one of the Offices of theſe Maſters in Chancery, there is always neceſſarily a much greater Sum of Money lying dead in the Office, than goes to pay for their Places, either for want of Securities whereon to place the Money, or from the different Claims of Perſons entitled thereto; or to ſatisfy the Demands of Creditors, and other Perſons, as they ſhall from Time to Time come in and prove their Debts, and from ſeveral other Cauſes, which I need not here enumerate.

And then, my Lords, Whether there be any great Difference between paying for their Places out of the Suitors Money, lying dead in their Hands, or raiſing ſo much Money out of their own Eſtates and Fortunes, in order to let the Suitors Money lie dead; whether a Practice of this Nature, which does no Sort of Hurt to the Suitors, is of no Advantage to the Maſters, and which the Earl himſelf was wholly a Stranger to, and which, if he had known, could not have been prevented; whether this can be heightned or improved into ſo heinous a Crime in the Earl, as to need or deſerve the moſt ſolemn Proſecution, which we are acquainted with, a Proſecution by the Repreſentatives of the whole Body of the Nation; this, my Lords, we humbly hope will deſerve to be thought of. In the mean time, as the Commons have choſen your Lordſhips to be the Judges, the Earl himſelf with the greateſt Pleaſure joins with them, and humbly appeals to your Lordſhips Juſt and Impartial Judgment.

Mr. Serj. *Probyn*. My Lords, the Evidence, which we have next to lay before your Lordſhips, relates to the 11th Article, by which it ſtands charged that ſeveral Maſters admitted by the Noble Earl, were Perſons of ſmall Subſtance and Ability; and in that reſpect very unfit to be truſted with the Great Sums of Money, and other Effects belonging to the Suitors, which were lodged in their Hands by Order of the ſaid Court; notwithſtanding which the Noble Earl did publickly in open Court declare them to be Perſons of great Fortunes, and in every reſpect qualified for the Truſt ſo repoſed in them, to the manifeſt Deceit and Prejudice of the Suitors of the ſaid Court: But, my Lords, tho' the Charge of this Article be conceived in general Terms, yet I apprehend we are now only to account for the Abilities and Circumſtances of ſuch of the Maſters, as they have deſcended into any particular Evidence againſt, upon that Head: Now the Maſters, who have been admitted in by his Lordſhip, and againſt whom any Inſinuations of this kind have been levelled, are Mr. *Kinaſton*, Mr. *Bennet*, Mr. *Elde*, and Mr. *Thurſton*: But I ſhould in the firſt Place obſerve, as to Mr *Elde* and Mr. *Thurſton*, That there is not the leaſt Pretence of any Deficiency in either of their Offices, from any Evidence that has been yet offered by the learned Managers, they ſtand both of them without Objection in point of Subſtance; as to Mr. *Kinaſton*, indeed, I do own, That at the Time, when he delivered in his Accounts, there appears to have been a Deficiency in his Office; but ſince that Time he hath given ſuch Security, as the Court thought fit to accept of, for anſwering it to the Suitors concern'd. At the time of his Admiſſion he appears to have been a Man of Fortune; he had a good Eſtate in Land, and a conſiderable ſum of Money in Bank; and had a great deal of Wood upon his Eſtate: If he really was a Man of a conſiderable Fortune at that time, and if he appeared ſo, and came well recommended in other reſpects to the noble Lord, what Foundation is there left to ſupport that part of the Charge againſt the noble Earl? As to Mr. *Thomas Bennet*, indeed, tho' he did make an Appearance in the World, equal to a Man of Fortune, yet he now pretends it was far from being ſo, tho' he had an Eſtate in Land; yet he has told your Lordſhips it was incumbred; but, with Submiſſion to your Lordſhips, it doth not appear that any of theſe Incumbrances were made known to the noble Earl; on the contrary, he appeared to him in the ſame Light as in the Year 1720. when he ſaith he was worth 20,000 *l.* and that theſe Incumbrances being private, it is impoſſible the noble Earl ſhould then know them; we ſhall ſhew that at this time he was not only a Man of viſible Subſtance, but of real Subſtance, equal to thoſe, who are uſually admitted into theſe Offices; and if he was equal, both in Reputation and Fortune, with thoſe admitted by the noble Earl's Predeceſſors, we hope it ſhall not be imputed a Crime in him, to have trod in their ſteps in that particular: In order to make this out againſt Mr. *Bennet*, we ſhall prove that about the time when he applied to *Hiccocks*, to get back part of the 7000 *l.* he then declared his Subſtance was ſo good, that if he could but have 2000 *l.* he would pay the reſt himſelf; he denied before your Lord-

ſhips that he ſaid ſo, but we have Perſons of undoubted Character to prove, that he did ſay ſo. And when that appears, we hope you will give the leſs Credit to Mr. *Bennet*'s Teſtimony in any other particular, which concerns his Fortune; we ſhall likewiſe prove, as to Mr. *Hiccocks* and Mr *Rogers*, that the Sums of Money, which they retained, are now ſubmitted to be returned by them reſpectively to the Court, to anſwer any Deficiency, ſo far as the Eſtates of their Succeſſors ſhall fall ſhort in ſatisfying the ſame; ſo that upon the whole, the Suitors are in no poſſibility of ſuffering by any Tranſaction of *Bennet* or *Kinaſton*. We ſhall beg leave to call our Witneſſes, and prove the ſeveral Facts I have opened to your Lordſhips upon this Article.

Mr. *Com. Serj.* My Lords, we humbly apprehend, that in this Caſe the noble Earl is not reſponſible for the bad Circumſtances of the Party; if he, upon inquiry, have received ſuch an Account as is proper to rely upon, and to ſatisfy a reaſonable Man, it is ſufficient: The greatneſs of the Truſts repoſed in theſe Maſters, hath been magnified, and great it is; but your Lordſhips will pleaſe to conſider, that it is not to be expected from the Nature of the Thing, that Perſons of great or overgrown Fortunes, ſhould take upon them thoſe Offices. They have informed your Lordſhips, that 120,000 *l.* hath been in one of theſe Gentlemens Hands. I believe no Perſons of ſuch vaſt Eſtates as 100,000 or 150,000 *l.* would give themſelves the trouble of executing theſe Offices, attended with ſuch riſque, and requiring ſo great attendance. I believe the Office of a Maſter in Chancery will never find either ſuch buyers or ſellers; all that can be expected is, that they muſt be Men of reaſonable Fortunes, Perſons of 4 or 500 *l.* a Year, brought up with a liberal Education; Perſons, who are of good Characters as to their Integrity and Abilities; this is all that can be reaſonably expected, and we apprehend it hath appear'd to your Lordſhips, that theſe Maſters, which the Evidence hath been given of, were ſuch, and ſuch a Repreſentation was made of them to the noble Earl. My Lords, I muſt ſubmit it upon the Evidence given in that behalf by the Gentlemen of the Houſe of Commons in this Proſecution, that Mr. *Kinaſton* did appear no way unfit, but a Perſon proper to be admitted into ſuch an Office; no Objections are made either to Mr. *Elde* or Mr. *Thurſton* As to Mr. *Thomas Bennet*, it will appear that his deficiency will be made good, and that is the beſt proof of his Ability; and, we hope, Mr. *Kinaſton*'s will be ſo too: As to Mr. *Thomas Bennet*, he hath denied that ever he told Mr. *Hiccocks*, that if he would return 2000 *l.* he would pay the reſt: Being ask'd, whether he had declared to any Body, that he had made that offer to Mr. *Hiccocks*, he anſwered directly in the Negative, that he had not, no he was ſure he had not; he was asked the Queſtion over and over. But, if my Inſtructions don't fail me, we ſhall produce three Witneſſes to ſhew your Lordſhips, that Mr. *Bennet* declared the ſame thing over and over again, and conſequently it could not be a ſlip of his Memory.

Mr. *Steele* called.

Mr. Serj. *Probyn*. I deſire he may inform your Lordſhips, as to what Reputation and Character Mr. *Bennet* was, in point of Fortune, when he was admitted Maſter?

Mr. *Steele*. Which of the *Bennets*?

Mr. Serj. *Probyn*. Mr. *Thomas Bennet*.

Mr. *Steele*. It is near two Years ago ſince Mr. *Thomas Bennet* came to be admitted a Maſter in Chancery, he was looked upon then to be a Man of good Subſtance and of good Reputation; and ſince that he had Married a Lady of a good Fortune, he made a good Appearance in the World, and was generally eſteemed to be a Man of Subſtance.

Mr. Serj. *Probyn*. Did he keep his Coach?

Mr. *Steele*. I have heard ſo; I don't know that of my own Knowledge.

Mr. *Plummer*. My Lords, if the Councel have done, I deſire to know what Character Mr. *Bennet* had as to his Integrity, whether he was accounted an honeſt Man or no?

Mr. *Steele*. My Lords, I never heard to the contrary in my Life; nor ever knew any thing to the contrary.

Mr. *Walker* Sworn.

Mr. Serj. *Probyn*. We deſire that Mr. *Walker* will inform your Lordſhips, what he knows of any Propoſal or Agreement for the Repayment of any Money by Mr. *Hiccocks*?

Mr. *Walker*. My Lords, Mr. *Hiccocks*, by order of the Court of Chancery, was to be examined upon Interrogatories, whether he had paid over all the Monies and Securities of the Suitors of the Court of Chancery, to his Succeſſor Mr. *Bennet*? It having been alledged by Mr. *Bennet*, that he retained out of them 7500 *l.* Mr. *Hiccocks* did think fit to ſubmit to the Payment of that Money, to make ſo much good to the Suitors of the Court, as the Eſtate of Mr. *Bennet* ſhould prove defective in ſatisfying, as appears by the Petition delivered by him, and the Anſwer to the Petition.

Mr. *Lutwyche*. We ſhall ſee that by the Petition. We deſire that the Copy of the Petition may be read; they are giving an Account of written Evidence: I deſire to ask you, whether you are not concerned as Clerk for Mr. *Hiccocks*?

Mr. *Walker*. I am concerned for Mr. *Hiccocks* as his Solicitor.

Mr. *Lutwyche*. Whether you had any Authority from Mr. *Hiccocks* to preſent that Petition?

Mr. *Walker*. I had Authority to preſent that Petition.

Mr. *Lutwyche*. When did you preſent the Petition?

Mr. *Walker*. About three or four Days ago.

Mr. Serj. *Pengelly*. We deſire to ſee what the Petition is? It hath been preſented ſince the Great Seal was in Commiſſion: Read it.

Mr. *Walker* reads it.

To the Right Honourable the Lords Commiſſioners for the Cuſtody of the Great Seal of *Great Britain*.

The humble Petition of *John Hiccocks*, Eſq; late one of the Maſters of this Court,

Sheweth,

THAT *by an Order of the* 23d *of* Feb. *laſt, upon the Affidavit of* Thomas Bennet, *Eſq; your Petitioner's Succeſſor, (who ſwore that the Sum of* 7500 *l. part of the Monies belonging to the Suitors of this Court, did remain*

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in your Petitioner's Hands, and was never paid over to him.) It was ordered that your Petitioner ſhould be Examined upon Interrogatories, whether all the Monies, Securities, and other Effects, belonging to the Suitors of the Court, were delivered over by your Petitioner to the ſaid Thomas Bennet, *and whether your Petitioner kept away any, and what part, by him.*

That Interrogatories have been accordingly prepared, and your Petitioner is Ordered to put in his Examination, or ſtand Committed.

That your Petitioner, by Reaſon of his Indiſpoſition, is not in a Capacity to put in his Examination.

That though your Petitioner did pay over, ſatisfy, and aſſign to the ſaid Thomas Bennet, *all the Monies, Effects, and Securities of the Suitors of the Court in your Petitioners Hands; and the ſaid* Thomas Bennet *hath given your Petitioner a Receipt in full for the ſame, yet, ſo far as the Eſtate of the ſaid* Thomas Bennet *ſhall fall ſhort to ſatisfy the juſt Demands of the Suitors of the Court; your Petitioner is willing to pay the Sum of 7500 l. into Court, Subject to the Order of the Court, ſo ſoon as your Petitioner can raiſe the ſame; and your Petitioner is willing to pay the Sum of 2000 l. part thereof within ten Days, and the Reſidue thereof within three Months, ſo as the ſame (as between your Petitioner and the ſaid* Thomas Bennet) *may not be conſtrued to extend to eaſe the ſaid* Thomas Bennet's *Eſtate from being liable in the firſt place to anſwer the Demands of the Suitors of the Court; but ſo as the ſame may abide as a Security to anſwer any deficiency of the ſaid* Thomas Bennet's *Eſtate; and to the end it may appear whether there will be any deficiency or not, that the real and perſonal Eſtate of the ſaid* Thomas Bennet *may be forthwith ſold, and diſpoſed of; and in the firſt place apply'd to anſwer the Demands of the Suitors of the Court; and the rather, for that your Petitioner is informed, the ſaid* Tho. Bennet *hath, purſuant to ſome Order of this Court, by Recognizances, and other Aſſurances, ſubjected his whole Eſtate towards making good thoſe Demands.*

Your Petitioner therefore moſt humbly prays your Lordſhips, that, upon Payment into Court of the ſaid 7500 l. on the Terms aforeſaid, Subject to the further Order of the Court, all further Proceedings upon the ſaid Order, for Compelling your Petitioner to be examined upon Interrogatories, may be ſtayed.

And your Petitioner, &c.

He Reads the Order, May 8th, 1725.

UPON Payment of 3000 l. into Court, and giving Security, ſuch as Mr. Holford *ſhall approve of, for Payment of the further Sum of 4500 l. alſo into Court, in a Month, both Sums to be Subject to the further Order of the Court; let all Proceedings for the Compelling the Petitioner to be examined upon the Interrogatories before the Maſter, be ſtayed. Hereof give notice forthwith*

J. Jekyle, *C. S.*
R. Raymond, *C. S.*

Mr. Serj. *Pengelly.* I would be glad to know, Whether we can rely upon this as an Authentick Order. Did he examine it?

Mr. *Walker.* The Original Petition and Anſwer are in the Regiſter's Office, to draw up an Order.

Mr. *Lutwyche.* Is it a right, a true Copy?

Mr. *Walker.* It is.

Mr. *Lutwyche.* Did you examine it?

Mr. *Walker.* Yes, I did.

Mr. *Com. Serj.* If it is not wholly immaterial to examine into the Circumſtances of this Gentleman, I would ask whether Mr. *Hiccocks* is a Perſon of Ability, ſufficient to make good this Sum?

Mr. *Walker.* My Lords, I don't know the Circumſtances of Mr. *Hiccocks*, nor his Riches. I believe he is able to do what he hath propoſed. I believe he hath paid the 3000*l.* in Money this Morning; he told me he would; and he hath propoſed Security for the Remainder 4500 *l.* and I believe the Security will be approved of.

Mr. *Lutwyche.* If they have done, I deſire he may be asked, How long ago it was ſince Mr. *Hiccocks* was ordered to be examined upon Interrogatories?

Mr. *Walker.* I think the Order is dated the 29th of *February.*

Mr. *Lutwyche.* And how long ago is it ſince this Propoſal was made?

Mr. *Walker.* The Petition was preſented the 8th of this Inſtant *May.*

Mr. *Lutwyche.* Was the Petition preſented before his Examination? When was it anſwered?

Mr. *Walker* It was anſwered the 8th of *May.* It was preferred a little while before. I believe, two or three Days. There was an Order, That Mr. *Hiccocks* ſhould put in his Examination in four Days, or ſtand committed; thereupon this Petition was preſented.

Mr. *Lutwyche.* I think it was on Payment of ſo much Money, and giving Security for the reſt, that all Proceedings were to ſtay. I don't find Mr. *Walker* can ſay the Money is paid, or Security given.

Mr. *Walker.* Mr. *Hiccocks* told me the 3000 *l.* was paid, and I know he hath offered Security for the 4500 *l*

Mr. *Lutwyche.* One or two Securities?
Mr. *Walker.* I believe only Sir *John Buckworth.*

Mr.

Mr. *Richard Rogers* ſworn.

Mr. Serj. *Probyn.* I deſire he may be asked what he knows of the Payment of any Money, or the Directing the Payment of any Money into Court by Mr. *Rogers*, the late Maſter, in Satisfaction of the Deficiency of Mr *Kinaſton*?

Mr. *Rogers.* I did, my Lords, by the Direction of Mr. *Rogers*, the late Maſter, prefer a Petition about the latter End of *April* laſt, upon the 28th, or 29th of *April*, to the Right Honourable the Lords Commiſſioners, and thereby did offer to give a Recognizance to make good to the Suitors of the Court any Sum not exceeding 6000 *l.* as the Eſtate of Mr. *Kinaſton* ſhould prove Defective in Anſwering the Effects of the Suitors of the Court. The Petition is anſwered, and I believe they deſign to pay the Money.

Mr. Serj. *Probyn.* Have you the Petition?

Mr. *Lutwyche.* Is the Order Drawn up?

Mr. *Rogers.* The Petition it ſelf I have in my Hand.

The Clerk Reads.

To the Right Honourable the Lords Commiſſioners for the Cuſtody of the Great Seal of *Great Britain.*

The humble Petition of *William Rogers*, Eſq; late one of the Maſters of the High-Court of Chancery,

Sheweth,

THAT *by an Order, made by your Lordſhips the* 20th *of* January *laſt, it was Ordered that Mr.* Kinaſton, *one of the Maſters of the ſaid Court, who ſucceeded your Petitioner, ſhould in a Week depoſite the Sum of* 26,908 *l.* 11 *s.* 3 *d.* ¼ *in the Bank of* England (*being the Ballance of the Account of Money and Securities of and belonging to divers Suitors of the ſaid Court, paid into the Hands of the ſaid Maſter* Kinaſton, *and your Petitioner*) *Or in Default thereof, that the ſaid Maſter* Kinaſton *ſhould enter into a Recognizance, in the Penalty of* 53,817 *l. with two or more Sureties to anſwer and pay the ſame as your Lordſhips ſhould direct.*

That the ſaid Kinaſton *not having paid the ſaid* 26,908 *l.* 11 *s.* 3 *d.* ¼ *into the Bank, or given Security for the ſame, as the ſaid Order directed; and having before propoſed towards Satisfaction of the ſaid* 26,908 *l.* 11 *s.* 3 *d.* ¼ *to aſſign over a Debt of* 20,850 *l. owing to him from one* De la Hay, *for the Benefit of the ſaid Suitors; it was by an Order made by your Lordſhips the* 29th *of* Jan *laſt, Ordered, That the ſaid Maſter* Kinaſton *ſhould aſſign over* De la Hay's *Debt to Mr.* Holford, *one other of the Maſter's of the ſaid Court, for the Benefit of the ſaid Suitors, and ſhould give his own Recognizance for the ſaid* 26,908 *l.* 11 *s.* 3 *d.* ¼ *in the Penalty of* 53,817 *l. And upon his ſo doing, the Time for his performing the ſaid former Order ſhould be enlarged to the* Wedneſday *following.*

That by another Order made the 3*d of* Feb. *laſt, your Lordſhips Ordered, That upon Mr.* Kinaſton's *aſſigning of the ſaid Debt, and upon his ſignifying his Conſent to be examined upon Interrogatories for Diſcovery of all other his real and perſonal Eſtate, and that the ſame might be aſſigned, and conveyed to the ſaid Maſter* Holford *in Truſt for the ſaid Suitors, the time for performing the former Order ſhould be enlarged to the* Wedneſday *following.*

That purſuant to the ſaid Order, the ſaid John Kinaſton *aſſigned over the ſaid* De la Hay's *Debt, but the ſame not being ſufficient to anſwer the ſaid Sum of* 26,908 *l.* 11 *s.* 3 *d.* ¼ Nicholas Paxton, *Solliciter for, and on Behalf of the Suitors of the ſaid Court, on the* 15th *of* Feb. *laſt, preferred his Petition to your Lordſhips, ſetting forth the ſeveral Proceedings aforeſaid; and that it appeared by Mr.* Kinaſton's *Affidavit that* 6000 *l. part of the ſaid* 26,908 *l.* 11 *s.* 3 *d.* ¼ *was retained by your Petitioner, at the time your Petitioner ſurrendered his ſaid Office to the ſaid Mr.* Kinaſton; *and that the ſame ſtill remained in your Petitioners Hands: It was therefore prayed that your Petitioner might forthwith pay the ſame for the Benefit of the ſaid Suitors, or to ſuch Perſons, and in ſuch manner, as your Lordſhips ſhould direct.*

That upon hearing the ſaid Petitioner, upon the 23*d of* Feb. *laſt, your Lordſhips were pleaſed to Order your Petitioner ſhould be forthwith ſtrictly examined before Mr.* Holford, *one of the Maſters of this Court, whether all the Monies, Securities, and Effects, belonging to the ſaid Suitors, were delivered over by your Petitioner to the ſaid Mr.* Kinaſton, *and whether he kept any, and what part thereof by him.*

That in purſuance of the laſt Order Interrogatories have been exhibited for the examination of your Petitioner; and in Caſe your Petitioner ſhould put in his Examination thereto, he doubts not, but it would appear that your Petitioner hath acted with great Juſtice towards the ſaid Maſter Kinaſton, *and that Mr.* Kinaſton *ought to anſwer and make good the ſaid* 6000 *l. to the Suitors of the ſaid Court; however your Petitioner being unwilling that any part of the Deficiency in the ſaid Maſter* Kinaſton's *Office ſhould be imputed to your Petitioner, or that the Suitors of the Court ſhould be put to any Expence or Trouble, in making any further Enquiry touching the ſaid* 6000 l. *your Petitioner is willing (if your Lordſhips ſhall think fit) to give his own Recognizance, or a good and ſufficient Mortgage, to be approved of by one of the Maſters of this Court, to ſuch Perſon or Perſons as your Lordſhips ſhall direct, to anſwer and make good to the Suitors of this Court any Sum not exceeding* 6000 l. *as the Eſtate and Effects of the ſaid Mr.* Kinaſton *ſhall fall ſhort of ſatisfying the ſaid* 26,908 l. 11 s. 3 d. ¼, *which he was ordered to depoſite in the Bank of* England *as aforeſaid; or if your Lordſhips ſhall think it more for the Benefit and Security of the ſaid Suitors, that your Petitioner ſhould bring* 6000 l. *into Court, your Petitioner is willing to bring in ſuch Sum for the Purpoſe aforeſaid, having a reaſonable Time allowed him to raiſe the ſame.*

Foraſmuch therefore as it is not pretended, but that your Petitioner has paid and delivered over to Mr. Kinaſton *all the Money and Securities belonging to the Suitors of this Court, which were in your Petitioner's Hands at the Time when he ſurrendred his ſaid Office to the ſaid Mr.* Kinaſton, *except the Sum of* 6000 l.

Your Petitioner humbly prays your Lordſhips will be pleaſed to make ſuch Order in the Premiſes, as to your Lordſhips ſhall ſeem meet; and that in the mean Time all Proceedings upon the ſaid Order of the 23d of *February* laſt, for examining your Petitioner upon Interrogatories, may be ſtayed.

And your Petitioner, &c.

The Clerk reads the Order. 29th of *April*, 1725.

Upon the Petitioner's paying the ſaid 6000 *l.* into Court, ſubject to the further Order of this Court, let all Proceedings upon the ſaid Order of the 23d of *February* laſt, for examining the Petitioner upon Interr gatories be ſtayed. Hereof give Notice forthwith.

Jeff. Gilbert, *C. S.*
R. Raymond, *C. S.*

There was another Petition preferred, but never anſwered.

Clerk

To the Right Honourable the Lords Commiſſioners for the Cuſtody of the Great Seal of Great Britain.

The Humble Petition of William Rogers, *Eſq; late one of the Maſters of this Court,*

SHEWETH,

THAT Mr. *Paxton*, in behalf of the Suitors upon Mr. *Kinaſton*, being 26,908 *l.* 11 *s.* 3 *d.*½ deficient in his Accounts, to anſwer the Suitors Monies in his Hands, having, by his Petition to your Lordſhips, repreſented *(inter alia)* That your Petitioner, upon ſurrendring your Petitioner's Office to him, detained, and ſtill hath in his Hands, the Sum of 6000 *l.* of the ſaid Suitors Money; your Lordſhips, upon hearing the ſaid Petition, on the 23d of *February* laſt, were pleaſed to Order your Petitioner ſhould be examined before Mr. *Holford*, one of the Maſters of this Court, Whether all the Monies, Securities and Effects, belonging to the ſaid Suitors, were delivered over by your Petitioner to the ſaid Mr. *Kinaſton?*

That your Petitioner, on the 29th Day of *April* laſt, preferred the annexed Petition to your Lordſhips; and your Lordſhips were, thereupon, pleaſed to make the Order thereunder ſubſcribed.

That your Petitioner is informed, the ſaid Mr. *Kinaſton* hath, purſuant to a former Order of your Lordſhips, by Recognizance and Aſſurances, ſubjected his whole Eſtate towards making good his ſaid Deficiency.

That your Petitioner, upon ſurrendring his Office, received from the ſaid Mr. *Kinaſton*, proper Diſcharges for all Monies, Securities and Effects of the ſaid Suitors, then in your Petitioner's Hands, which your Petitioner is ready to produce and prove: And the ſaid Mr. *Kinaſton* from that Time, never pretended but that the Account delivered in to him, contained a full Account of all the Money, Effects and Securities of the Suitors of the Court in your Petitioner's Hands, except the Sum of 70 *l.* or thereabouts, which your Petitioner was always ready to pay him, provided he would have given your Petitioner an Account wherein the ſaid Omiſſion or Miſtake conſiſted; and your Petitioner, upon Examination of his Vouchers, found the ſame to be true; but the ſaid Mr. *Kinaſton* hath hitherto neglected ſo to do, though your Petitioner hath ſent to him ſeveral Times for that Purpoſe.

That your Petitioner, upon the Terms mentioned in the annexed Petition, is willing to pay a ready Obedience to your Lordſhips Order thereupon; and for that Purpoſe, now humbly offers, in Six Days time, to pay 2000 *l.* part of the ſaid 6000 *l.* into Court, ſubject to the further Order of the Court, ſo far as may be neceſſary to make good any Deficiency to the Suitors of the Court, which Mr. *Kinaſton*'s Eſtate ſhall not be ſufficient to anſwer.

And your Petitioner humbly prays, he may have a Month's Time to pay in the remaining 4000 *l. (your Petitioner being obliged to borrow the ſame on his Eſtate) and that all Proceedings on the ſaid Order of the* 23*d of* February *laſt, againſt your Petitioner, may, in the mean Time, be ſtayed: And your Petitioner further humbly prays your Lordſhips, That the ſaid Order, made by your Lordſhips on the* 29*th of* April *laſt, may be ſo far explained, that as between the ſaid Mr.* Kinaſton *and your Petitioner, the ſame may not be conſtrued to extend to eaſe the ſaid Mr.* Kinaſton*'s Eſtate from being liable, in the firſt Place, to anſwer the Demands of the Suitors of the Court; or, if all, or any Part of the ſaid* 6000 *l. ſhall be applied for that Purpoſe; that your Petitioner may then ſtand in the Place of the Suitors of the Court, to have Satisfaction out of the Eſtate of the ſaid Mr.* Kinaſton, *for all, or ſo much of the ſaid* 6000 *l. as ſhall be ſo applied; and that the ſaid* 6000 *l. ſo to be depoſited by your* Petitioner, *or any Part thereof, may not be applied towards making good the ſaid Mr.* Kinaſton*'s Deficiency, till after Sale and Diſpoſal of all the ſaid Mr.* Kinaſton*'s real and perſonal Eſtate for that Purpoſe.*

And your Petitioner ſhall ever pray, &c.

Mr. Serj. *Pengelly.* Is there any Order upon this?

Mr. *Rogers.* This was never anſwered.

Mr. *Lutwyche.* If they have done, I deſire he may be asked, if he hath given any Notice to the Sollicitor of the other Side, of the Order on the firſt Petition?

Mr. *Rogers.* I did acquaint Mr. *Paxton*, that I had ſuch an Order; but I did not ſerve it upon him.

Mr. *Com. Serj.* I deſire to ask you, Whether, when you told Mr. *Paxton* of it, he inſiſted upon a formal Service?

Mr. *Rogers.* Mr. *Paxton* ſaid, Let it be done as ſoon as poſſible.

Mr. *Com. Serj.* What Anſwer did you give to Mr. *Paxton*, when he deſired it might be done as ſoon as poſſible?

Mr. *Rogers.* I told him, I was raiſing the Money by Direction of Mr. *Rogers.*

Mr. *Com. Serj.* I ask you, If you had any Directions from Mr. *Rogers*, for the Payment of, or for raiſing the Money?

Mr. *Rogers.* Yes, I had. I believe it will be paid in a Day or two. I can't directly ſay what Day. Such a Sum is not immediately raiſed.

Mr. *Com. Serj.* I deſire he may be asked, Whether there is any Reaſon to doubt of his Ability to raiſe the Money?

Mr. *Rogers.* I believe he is able to give a Security; but, as he lives in the Country, he may not be able at preſent to pay ſo much Money; but he is now in Town, and endeavouring to raiſe the Money.

Mr. *Com. Serj.* My Lords, we beg leave to call two or three Gentlemen, with reſpect to Mr. *Thomas Bennet*, what he hath ſaid; and that he ſaid he was able to pay all the reſt of the Money, if Mr. *Hiccocks* would pay 2000 *l.*

Mr. Holford *called.*

Mr. *Serj. Probyn.* My Lords, we beg leave to begin with Mr. *Holford*, and to ask him, Whether he was not employed, or concerned as a Friend to Mr. *Thomas Bennet*, to go to Mr. *Hiccocks*, and what Propoſals he was to make to Mr. *Hiccocks?*

Mr. *Holford.* Preſently after the Article was delivered in by Mr. *Thomas Bennet*, relating to the Money he ſaid was in the Hands of Perſons of Ability and Subſtance, to the Judges and Gentlemen of the Bank, Mr. *Bennet* did ſend to me, to deſire I would ſpeak to Mr. *Hiccocks*, that if he would pay him but 2000 *l.* he would pay the Remainder of the Money. I did not much care to undertake it; but upon ſome Importunity, I did go upon the ſaid Meſſage; and it was this, That he deſired me to tell Mr. *Hiccocks*, that if he would

pay him back 2000 *l.* he could or would take care that the reſt ſhould be paid, and Mr. *Hiccocks* ſhould not be troubled about the Remainder.

Mr. *Serj. Probyn.* I deſire he may be asked, Whether he had any Diſcourſe with Mr. *Thomas Bennet*, concerning what paſſed between him and Mr. *Hiccocks*?

Mr. *Holford.* Mr. *Hiccocks* told me ——

Mr. *Lutwyche.* That is no Evidence.

Mr. *Holford.* I am only relating the Anſwer he returned to my Meſſage; which was, That Mr. *Bennet* had given in that Article, and brought his Name in Queſtion, without ever acquainting him of it; and therefore he would never have any thing to do with him. I did give him that Anſwer, and never troubled myſelf any more about it.

Mr. *Lutwyche.* I deſire Mr. *Holford* would recollect the Time.

Mr. *Holford.* I believe it was the next Day after he had given in that Article.

Mr. *Lutwyche.* I think they call this Witneſs to prove a Contradiction in Mr. *Bennet*'s. Mr. *Holford* ſays, He ſaid he was willing, he would take care the reſt ſhould be paid. I deſire to know, Whether he declared he had the Money to pay, the Money in his own Hands?

Mr. *Holford.* No, my Lords, I can't ſay he told me ſo.

E. of *Macclesfield.* I deſire to ask him, If Mr. *Bennet* did not expreſly tell him, That he was able to pay the Money; or if Mr. *Holford* would have gone upon the Errand, without being ſatisfied that he was able to pay the Money?

Mr. *Holford.* Mr. *Hiccocks* was my old Acquaintance and Friend, I did not intend to deceive him; if I had not believed what Mr. *Bennet* ſaid to be true, and that he could make good what he at that Time ſent me to deſire Mr. *Hiccocks* to accept, I would not have gone on that Errand to him.

Mr. Thurſton *called.*

Mr. *Serj. Probyn.* My Lords, we deſire Mr. *Thurſton* may inform your Lordſhips what he hath heard Mr. *Thomas Bennet* ſay, in relation to Mr. *Hiccocks*, about his paying back 2000 *l.*

Mr *Thurſton.* I do remember Mr. *Thomas Bennet* told me, and I think I was then ſitting in the publick Office, that if *Hiccccks* (as I think his Expreſſion was) would pay him back 2000 *l.* he would make up the reſt himſelf.

Mr. *Serj. Probyn.* I deſire Mr. *Thurſton* to explain himſelf, whether he expreſſed himſelf in that manner that Mr. *Thurſton* apprehended he was able to do it?

Mr. *Thurſton.* I can't ſwear critically to the laſt Words, that he would make up the reſt himſelf; but he ſpoke in ſuch Words, that I underſtood he meant ſo; that was the Senſe of thoſe Words, as I have delivered it now to your Lordſhips.

Mr. *Serj. Probyn.* Had you any Diſcourſe at any other Time with Mr. *Thomas Bennet* about it?

Mr. *Thurſton.* I believe I had ſome Diſcourſe with Mr. *Thomas Bennet* at another Time; and I asked him, Why he would not pay in as much as he had undertaken, if Mr. *Hiccocks* had paid him 2000 *l.*? The Reply he gave me was, All he had in the World would not do it.

Mr. *Serj. Probyn.* I deſire he may be asked, if he had any Diſcourſe with Mr. *Thomas Bennet* at any Time, about his Ability to pay this Money, or whether he was able to pay it?

Mr. *Thurſton.* I had no Diſcourſe with Mr. *Thomas Bennet* directly, of his Ability to pay in this Money, when theſe Accompts were called for; but I do remember, at a preceding Time, he was talking of *Hiccocks*'s detaining his Money by way of Retainer; explaining the Reaſon, why he paid for the Place that he bought of Mr. *Hiccocks* out of the Suitors Money, that it was the moſt Compendious Method of doing in that Caſe, and prevented the Trouble of Mortgaging his Eſtate.

Mr. *Serj. Probyn.* Did he ſay any thing in caſe of his Death, Whether he ſhould leave ſufficient to ſatisfy it?

Mr. *Thurſton.* He ſaid at that Time, if he died, there would be Eſtate ſufficient to anſwer it; therefore he had the leſs Occaſion to trouble himſelf to raiſe the Money, but to pay it in the particular Manner I have mentioned.

Mr. *Plummer.* I deſire to ask him, If Mr. *Bennet* explained to him in what Manner the Money was to be raiſed, to make good the Deficiency?

Mr. *Thurſton.* He did not at all explain to me, how he was to raiſe it.

Mr. *Plummer.* I deſire to ask you more particularly, Whether he mentioned to have inſured any Money upon his Life?

Mr. *Thurſton.* Not at that Time, as I remember; I have heard him at other Times talk of inſuring of Money on his Life.

Mr. *Serj. Pengelly.* When was the firſt Time that Mr. *Bennet* told you, that if Mr. *Hiccocks* would pay him Two thouſand Pounds, he would make up the reſt himſelf?

Mr. *Thurſton.* My Lords, I can't remember diſtinctly the Time, never having imagined I ſhould be called upon to repeat it on this Occaſion; but it muſt neceſſarily be after the Accompts were given in before the Judges. I can't exactly remember the Time, or Day, or Week.

Mr. Elde *called again.*

Mr. *Serj. Probyn.* My Lords, we deſire that Mr. *Elde* may inform your Lordſhips what Diſcourſe he had with Mr. *Bennet*, in relation to the Money in Mr. *Hiccocks*'s Hands?

Mr. *Elde.* Some ſmall Time after I had given in my Accompt, I ſaw Mr. *Bennet*; and he came up to me and ſaid, That it was hard that he could not have any Money from Mr. *Hiccocks*. He ſaid, If he would pay him 2000 *l.* he would, or could pay the reſt. I do not remember which.

Mr. *Serj. Probyn.* Whether he thinks he might have been able to pay it, if he had thought fit?

Mr. *Elde.* I know nothing of Mr. *Bennet*'s Circumſtances; I am as little acquainted with him, as with any I muſt neceſſarily have Correſpondence with.

Mr. *Serj. Probyn.* My Lords, We ſhall not trouble your Lordſhips with any further Evidence on the 11th Article, in which we think we have ſufficiently contradicted Mr. *Thomas Bennet*, as to the Charge he hath made on the Noble Lord. As to the 12th Article, that principally relates to that Part, That the Purchaſe Money was paid out of the Suitors Money; that is a Fact that lies upon the Gentlemen of the Houſe of Commons to prove: It is impoſſible for Us to prove a Negative, they are to prove the Affirmative, and they have not attempted to prove it by any Witneſs; but by Mr. *Thomas Bennet*: Now this being a Fact that reſts intirely upon Mr. *Bennet*'s Evidence, we ſubmit, Whether your Lordſhips can believe any thing upon the Credit of his Teſtimony?

Mr. *Com.*

Mr. *Com. Serj.* My Lords, We humbly apprehend the Gentlemen of the Houſe of Commons, by joining theſe Two Articles together, did it as if they were the ſame, and did depend upon one another: for unleſs the Matter in the 11th Article be eſtabliſhed, what was done on the 12th, will be of no great Significancy; For if Perſons of good Ability, who are reſponſible, and fit to anſwer the Money that comes to their Hands, be admitted to be Maſters, it is not very material whether the Forms of transferring in like Tranſactions of that Nature are ſtrictly purſued or no; becauſe the Perſon, being ſufficient and reſponſible, will anſwer that Money that is ſo detained. I chooſe to call them Forms; for, with Submiſſion, if we examine them, they are Forms, and nothing elſe: whether they take all the Money from the preceding Maſter, or replace with the Succeſſor's own Money, what is detained by the Predeceſſor, it comes to the ſelf ſame Thing, and are only different Forms or Methods of Payment. Upon the whole, we apprehend, We have eſtabliſhed our Anſwer to the 11th Article; we think the other follows of Courſe; and that there is no Neceſſity to give your Lordſhips any further Trouble on this Head; but that the Noble Earl will ſtand clear as to any Accuſation on theſe Two Articles.

Then all Perſons concerned in the Impeachment, were directed to withdraw, and then the Houſe adjourned to Ten o' Clock the next Morning.

Friday, 14 May, 1725. *The Seventh Day.*

THE Lords being ſeated in their Houſe, the Serjeant at Arms made Proclamation for Silence; as alſo another Proclamation, That all Perſons concerned, were to take Notice, That *Thomas* Earl of *Macclesfield* now ſtood upon his Tryal; and they might come forth in order to make good the Charge.

L. Ch. J. *King.* Mr. Serjeant *Probyn*, you may go on.

Mr. *Strange.* My Lords, We who are Councel for the Noble Earl within the Bar, beg Leave to proceed to his Defence againſt the 13th and 14th Articles of the Commons Charge.

My Lords, The Facts contained in theſe Two Articles, are laid to be done with a View of concealing a Deficiency, that had happened in the Office of Mr. *Dormer*, a Maſter of the Court; upon whoſe Failure it is charged, that there was a total Neglect, either to ſecure his Perſon or Effects, or to enter into any Inquiry into the Deficiency: And that altho' the State of this Affair was fully known to the Earl of *Macclesfield*, yet a Declaration was afterwards made in open Court, That Mr. *Dormer* was only gone into the Country to take the Air; That he would return again in a little while, and all would be well: And that in further Proſecution of this Endeavour to conceal the Deficiency in *Dormer*'s Office, a precarious and trifling Compoſition was made with a Creditor of Mr. *Dormer*'s; and this without any Notice to the Suitors of the Court.

My Lords, I ſhall, for my Part, confine myſelf at preſent to theſe Two Articles only, reſerving any thing I may have to offer in general to the Cloſe of the Defence; but before I proceed to obſerve upon the Evidence brought to ſupport the Charge contained in theſe Two Articles, it will be proper to take Notice to your Lordſhips, That the Honourable Managers for the Houſe of Commons, have not offered one Tittle of Proof, as to the Declaration pretended to be made, relating to Mr. *Dormer*'s being gone to take the Air, though they were pleaſed to inlarge upon it in their Opening; but we have the Satisfaction to know, That we are before your Lordſhips, who are incapable of receiving any Impreſſions from Facts that are barely opened, and not proved; and therefore we reſt aſſured, that no Weight will be laid upon this Circumſtance, ſince no Evidence has been produced in Support of this Part of the Charge.

My Lords, As to the other Matters contained in theſe Articles, we humbly hope to give your Lordſhips abundant Satisfaction in the Noble Earl's Behaviour on that Occaſion; that all the proper Steps were taken to ſecure the Intereſt of the Suitors; and that, if there ſtill remains any Deficiency, it is not to be imputed to any Neglect of the Noble Earl within the Bar.

Your Lordſhips were pleaſed to obſerve in the Courſe of the Evidence produced by the Honourable Managers for the Houſe of Commons, That Mr. *Dormer*'s Failure happened about *Chriſtmas*, 1720. My Lords, it was about that Time that Mr. *Wilſon*, who had large Effects of Mr. *Dormer*'s in his Hands, ſtopped Payment; which unfortunately obliged Mr. *Dormer*, without the Knowledge or Suſpicion of any one, to retire himſelf to *Holland*; and ſoon after, Notice was given of it to Mr. *Cottingham*, who immediately acquainted the Earl of *Macclesfield* with it.

Upon this, my Lords, no Time was loſt; for the Two Senior Maſters, Mr. *Hiccocks* and Mr. *Rogers*, were appointed to inquire into Mr. *Dormer*'s Affairs: His Chambers were ſearched; the Transfer of any Stock in the publick Funds was ſtopp'd; and all Endeavours uſed to procure a full Satisfaction for the Suitors of the Court: But, my Lords, though theſe Methods were very proper to prevent the embezzling of Mr. *Dormer*'s Effects, yet your Lordſhips will readily perceive, that no Steps, that could be taken whilſt Mr. *Dormer* was on the other Side of the Water, could be in any Degree effectual towards the Payment of his Debts.

And therefore, my Lords, it was, that upon a Propoſal of Mr. *Dormer*'s, to come over and diſcover his Effects for the Benefit of the Suitors, in caſe he might be aſſured of his Liberty, and not be left to die in a Gaol in his old Age (as himſelf expreſſes it) the Noble Earl within the Bar, was prevailed upon to give him thoſe Aſſurances; but upon Condition, That he made a full Diſcovery, and aſſigned over all he had.

Suppoſe, my Lords, the Propoſal had not been complied with, would the Suitors have been in a better Condition than they now are in? The Perſon of Mr. *Dormer* was out of Reach; the Stock could not be transferred without his Preſence or Conſent, nor were there any Means to procure it under theſe Circumſtances, without ſome Compliance on the Side of the Noble Earl. To ſay, My Lords (and it was only ſaid) That Dr. *Eddisbury*'s Perſon was ſecured, is, in my humble Apprehenſion, an Argument of no Weight in this Caſe, ſince it does not appear, that he was out of the Reach of the Court before his Failure;

pay him back 2000 *l.* he could or would take care that the reſt ſhould be paid, and Mr. *Hiccocks* ſhould not be troubled about the Remainder.

Mr. *Serj. Probyn.* I deſire he may be asked, Whether he had any Diſcourſe with Mr. *Thomas Bennet*, concerning what paſſed between him and Mr. *Hiccocks*?

Mr. *Holford.* Mr. *Hiccocks* told me ——

Mr. *Lutwyche.* That is no Evidence.

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Mr. *Holford.* No, my Lords, I can't ſay he told me ſo.

E. of *Macclesfield.* I deſire to ask him, If Mr. *Bennet* did not expreſly tell him, That he was able to pay the Money; or if Mr. *Holford* would have gone upon the Errand, without being ſatisfied that he was able to pay the Money?

Mr. *Holford.* Mr. *Hiccocks* was my old Acquaintance and Friend, I did not intend to deceive him; if I had not believed what Mr. *Bennet* ſaid to be true, and that he could make good what he at that Time ſent me to deſire Mr. *Hiccocks* to accept, I would not have gone on that Errand to him.

Mr. Thurſton *called.*

Mr. *Serj. Probyn.* My Lords, we deſire Mr. *Thurſton* may inform your Lordſhips what he hath heard Mr. *Thomas Bennet* ſay, in relation to Mr. *Hiccocks*, about his paying back 2000 *l.*

Mr. *Thurſton.* I do remember Mr. *Thomas Bennet* told me, and I think I was then ſitting in the publick Office, that if *Hiccocks* (as I think his Expreſſion was) would pay him back 2000 *l.* he would make up the reſt himſelf.

Mr. *Serj. Probyn.* I deſire Mr. *Thurſton* to explain himſelf, whether he expreſſed himſelf in that manner that Mr. *Thurſton* apprehended he was able to do it?

Mr. *Thurſton.* I can't ſwear critically to the laſt Words, that he would make up the reſt himſelf; but he ſpoke in ſuch Words, that I underſtood he meant ſo; that was the Senſe of thoſe Words, as I have delivered it now to your Lordſhips.

Mr. *Serj. Probyn.* Had you any Diſcourſe at any other Time with Mr. *Thomas Bennet* about it?

Mr. *Thurſton.* I believe I had ſome Diſcourſe with Mr. *Thomas Bennet* at another Time; and I asked him, Why he would not pay in as much as he had undertaken, if Mr. *Hiccocks* had paid him 2000 *l.*? The Reply he gave me was, All he had in the World would not do it.

Mr. *Serj. Probyn.* I deſire he may be asked, if he had any Diſcourſe with Mr. *Thomas Bennet* at any Time, about his Ability to pay this Money, or whether he was able to pay it?

Mr. *Thurſton.* I had no Diſcourſe with Mr. *Thomas Bennet* directly, of his Ability to pay in this Money, when theſe Accompts were called for; but I do remember, at a preceding Time, he was talking of *Hiccocks*'s detaining his Money by way of Retainer; explaining the Reaſon, why he paid for the Place that he bought of Mr. *Hiccocks* out of the Suitors Money, that it was the moſt Compendious Method of doing in that Caſe, and prevented the Trouble of Mortgaging his Eſtate.

Mr. *Serj. Probyn.* Did he ſay any thing in caſe of his Death, Whether he ſhould leave ſufficient to ſatisfy it?

Mr. *Thurſton.* He ſaid at that Time, if he died, there would be Eſtate ſufficient to anſwer it; therefore he had the leſs Occaſion to trouble himſelf to raiſe the Money, but to pay it in the particular Manner I have mentioned.

Mr. *Plummer.* I deſire to ask him, If Mr. *Bennet* explained to him in what Manner the Money was to be raiſed, to make good the Deficiency?

Mr. *Thurſton.* He did not at all explain to me, how he was to raiſe it.

Mr. *Plummer.* I deſire to ask you more particularly, Whether he mentioned to have inſured any Money upon his Life?

Mr. *Thurſton.* Not at that Time, as I remember; I have heard him at other Times talk of inſuring of Money on his Life.

Mr. *Serj. Pengelly.* When was the firſt Time that Mr. *Bennet* told you, that if Mr. *Hiccocks* would pay him Two thouſand Pounds, he would make up the reſt himſelf?

Mr. *Thurſton.* My Lords, I can't remember diſtinctly the Time, never having imagined I ſhould be called upon to repeat it on this Occaſion; but it muſt neceſſarily be after the Accompts were given in before the Judges. I can't exactly remember the Time, or Day, or Week.

Mr. Elde *called again.*

Mr. *Serj. Probyn.* My Lords, we deſire that Mr. *Elde* may inform your Lordſhips what Diſcourſe he had with Mr. *Bennet*, in relation to the Money in Mr. *Hiccocks*'s Hands?

Mr. *Elde.* Some ſmall Time after I had given in my Accompt, I ſaw Mr. *Bennet*; and he came up to me and ſaid, That it was hard that he could not have any Money from Mr. *Hiccocks*. He ſaid, If he would pay him 2000 *l.* he would, or could, pay the reſt. I do not remember which.

Mr. *Serj. Probyn.* Whether he thinks he might have been able to pay it, if he had thought fit?

Mr. *Elde.* I know nothing of Mr. *Bennet*'s Circumſtances; I am as little acquainted with him, as with any I muſt neceſſarily have Correſpondence with.

Mr. *Serj. Probyn.* My Lords, We ſhall not trouble your Lordſhips with any further Evidence on the 11th Article, in which we think we have ſufficiently contradicted Mr. *Thomas Bennet*, as to the Charge he hath made on the Noble Lord. As to the 12th Article, that principally relates to that Part, That the Purchaſe Money was paid out of the Suitors Money; that is a Fact that lies upon the Gentlemen of the Houſe of Commons to prove: It is impoſſible for Us to prove a Negative, they are to prove the Affirmative, and they have not attempted to prove it by any Witneſs; but by Mr. *Thomas Bennet*: Now this being a Fact that reſts intirely upon Mr. *Bennet*'s Evidence, we ſubmit, Whether your Lordſhips can believe any thing upon the Credit of his Teſtimony?

Mr. *Com.*

Mr. *Com. Serj.* My Lords, We humbly apprehend the Gentlemen of the Houſe of Commons, by joining theſe Two Articles together, did it as if they were the ſame, and did depend upon one another: for unleſs the Matter in the 11th Article be eſtabliſhed, what was done on the 12th, will be of no great Significancy; For if Perſons of good Ability, who are reſponſible, and fit to anſwer the Money that comes to their Hands, be admitted to be Maſters, it is not very material whether the Forms of transferring in like Tranſactions of that Nature are ſtrictly purſued or no; becauſe the Perſon, being ſufficient and reſponſible, will anſwer that Money that is ſo detained. I chooſe to call them Forms; for, with Submiſſion, if we examine them, they are Forms, and nothing elſe: whether they take all the Money from the preceding Maſter, or replace with the Succeſſor's own Money, what is detained by the Predeceſſor, it comes to the ſelf ſame Thing, and are only different Forms or Methods of Payment. Upon the whole, we apprehend, We have eſtabliſhed our Anſwer to the 11th Article; we think the other follows of Courſe; and that there is no Neceſſity to give your Lordſhips any further Trouble on this Head; but that the Noble Earl will ſtand clear as to any Accuſation on theſe Two Articles.

Then all Perſons concerned in the Impeachment, were directed to withdraw, and then the Houſe adjourned to Ten o' Clock the next Morning.

Friday, 14 May, 1725. *The Seventh Day.*

THE Lords being ſeated in their Houſe, the Serjeant at Arms made Proclamation for Silence; as alſo another Proclamation, That all Perſons concerned, were to take Notice, That *Thomas* Earl of *Macclesfield* now ſtood upon his Tryal; and they might come forth in order to make good the Charge.

L. Ch. J. *King*. Mr. Serjeant *Probyn*, you may go on.

Mr. *Strange*. My Lords, We who are Councel for the Noble Earl within the Bar, beg Leave to proceed to his Defence againſt the 13th and 14th Articles of the Commons Charge.

My Lords, The Facts contained in theſe Two Articles, are laid to be done with a View of concealing a Deficiency, that had happened in the Office of Mr. *Dormer*, a Maſter of the Court; upon whoſe Failure it is charged, that there was a total Neglect, either to ſecure his Perſon or Effects, or to enter into any Inquiry into the Deficiency: And that altho' the State of this Affair was fully known to the Earl of *Macclesfield*, yet a Declaration was afterwards made in open Court, That Mr. *Dormer* was only gone into the Country to take the Air; That he would return again in a little while, and all would be well: And that in further Proſecution of this Endeavour to conceal the Deficiency in *Dormer*'s Office, a precarious and trifling Compoſition was made with a Creditor of Mr. *Dormer*'s; and this without any Notice to the Suitors of the Court.

My Lords, I ſhall, for my Part, confine myſelf at preſent to theſe Two Articles only, reſerving any thing I may have to offer in general to the Cloſe of the Defence; but before I proceed to obſerve upon the Evidence brought to ſupport the Charge contained in theſe Two Articles, it will be proper to take Notice to your Lordſhips, That the Honourable Managers for the Houſe of Commons, have not offered one Tittle of Proof, as to the Declaration pretended to be made, relating to Mr. *Dormer*'s being gone to take the Air, though they were pleaſed to inlarge upon it in their Opening; but we have the Satisfaction to know, That we are before your Lordſhips, who are incapable of receiving any Impreſſions from Facts that are barely opened, and not proved; and therefore we reſt aſſured, that no Weight will be laid upon this Circumſtance, ſince no Evidence has been produced in Support of this Part of the Charge.

My Lords, As to the other Matters contained in theſe Articles, we humbly hope to give your Lordſhips abundant Satisfaction in the Noble Earl's Behaviour on that Occaſion; that all the proper Steps were taken to ſecure the Intereſt of the Suitors; and that, if there ſtill remains any Deficiency, it is not to be imputed to any Neglect of the Noble Earl within the Bar.

Your Lordſhips were pleaſed to obſerve in the Courſe of the Evidence produced by the Honourable Managers for the Houſe of Commons, That Mr. *Dormer*'s Failure happened about *Chriſtmas*, 1720. My Lords, it was about that Time that Mr. *Wilſon*, who had large Effects of Mr. *Dormer*'s in his Hands, ſtopped Payment; which unfortunately obliged Mr. *Dormer*, without the Knowledge or Suſpicion of any one, to retire himſelf to *Holland*; and ſoon after, Notice was given of it to Mr. *Cottingham*, who immediately acquainted the Earl of *Macclesfield* with it.

Upon this, my Lords, no Time was loſt; for the Two Senior Maſters, Mr. *Hiccocks* and Mr. *Rogers*, were appointed to inquire into Mr. *Dormer*'s Affairs: His Chambers were ſearched; the Transfer of any Stock in the publick Funds was ſtopp'd; and all Endeavours uſed to procure a full Satisfaction for the Suitors of the Court: But, my Lords, though theſe Methods were very proper to prevent the embezzling of Mr. *Dormer*'s Effects, yet your Lordſhips will readily perceive, that no Steps, that could be taken whilſt Mr. *Dormer* was on the other Side of the Water, could be in any Degree effectual towards the Payment of his Debts.

And therefore, my Lords, it was, that upon a Propoſal of Mr. *Dormer*'s, to come over and diſcover his Effects for the Benefit of the Suitors, in caſe he might be aſſured of his Liberty, and not be left to die in a Gaol in his old Age (as himſelf expreſſes it) the Noble Earl within the Bar, was prevailed upon to give him thoſe Aſſurances; but upon Condition, That he made a full Diſcovery, and aſſigned over all he had.

Suppoſe, my Lords, the Propoſal had not been complied with, would the Suitors have been in a better Condition than they now are in? The Perſon of Mr. *Dormer* was out of Reach; the Stock could not be transferred without his Preſence or Conſent, nor were there any Means to procure it under theſe Circumſtances, without ſome Compliance on the Side of the Noble Earl. To ſay, My Lords (and it was only ſaid) That Dr. *Eddisbury*'s Perſon was ſecured, is, in my humble Apprehenſion, an Argument of no Weight in this Caſe, ſince it does not appear, that he was out of the Reach of the Court before his Failure;

lure; and, I am perſuaded, the Gentlemen, who mentioned this Inſtance, don't deſire to have it thought, That the Noble Lord, who then preſided, was capable of ſo great a Breach of Faith, as to deprive him of his Liberty after a Promiſe to the contrary: It muſt be ſubmitted, therefore, to your Lordſhips, whether the committing a Man in the Power of the Court, was a Precedent that could be followed in the Caſe of Mr. *Dormer*.

My Lords, To finiſh this Part of the Defence in not ſecuring the Perſon of Mr. *Dormer*, I ſhall beg Leave only to obſerve, That though it is alledged in the Articles, and was inſiſted on in the Opening and Summing up, That Application was made to the Earl of *Macclesfield* for that Purpoſe, yet the Honourable Managers forgot to call any Witneſſes to the Proof of that Particular; which muſt therefore reſt upon the Denial in the Anſwer of the Noble Earl.

My Lords, It was inſiſted upon, That Mr. *Dormer* had not complied with his own Propoſal in diſcovering and delivering up his whole Effects; and for that Purpoſe a Witneſs was called to inform your Lordſhips of a very great Diſcovery that has been ſince made of a Quantity of Hops, that belonged to Mr. *Dormer*: Your Lordſhips remember how very lamely they were proved to belong to Mr. *Dormer*, and how reaſonable an Account was given of their being kept ſo long in Hopes of a better Market. My Lords, we ſhall not preſume to entertain your Lordſhips with any Counter-Proof of ſuch a trifling Evidence (as a learned Manager was pleaſed to call it) but beg Leave to infer from thence, That it is evident a more than ordinary Care was taken in looking after Mr. *Dormer*'s Effects, ſince, after Four Years, which have paſt from the Time of aſſigning his Eſtate, a few muſty Hops are all that are diſcovered.

My Lords, We humbly hope to make it fully appear to your Lordſhips, That the complying with Mr. *Dormer*'s Propoſal was the only Means to procure any Satisfaction: Had not Mr. *Dormer* been induced to come over, his Books and Accounts would never have appeared; and had he died Abroad, as he did ſoon after his coming Home, I am perſuaded the Deficiency would have been much greater: And if a full Diſcovery of his Effects was not made (which, however, I apprehend there is no Foundation to believe, after the Hops are laid out of the Caſe) the ſame will appear to be owing to his Death, which happened in a ſhort Time after his Return.

My Lords, The ſeveral Steps that were taken towards ſecuring the Effects of Mr. *Dormer*, muſt neceſſarily promulge his Failure in ſome Meaſure; the Chambers could not be ſearched; there could not be Caveats enter'd in the Books of all the publick Funds; nor could *Lockman* be caution'd againſt expecting any more out of the Effects of Mr. *Dormer*, without making ſome Noiſe, and giving People Notice: And, therefore, when we have made out theſe Facts, I humbly hope, the Noble Earl will ſtand acquitted of any Deſign to conceal the State of *Dormer*'s Office, in Prejudice of the Suitors; but that, conſidering all the Circumſtances of the Caſe, he took the wiſeſt and propereſt Courſe to ſecure as ample a Satisfaction for the Suitors, as it was in his Power to do.

My Lords, The 14th Article, relating to the Compoſition with *Wilſon*, will give me no Occaſion to take up much of your Lordſhips Time. It is called a precarious and trifling Compoſition, and was aggravated in the Opening, and ſo, of courſe, in the ſumming up, by a Matter, which they failed in the Proof of, That that *Wilſon* was ſuffered to compound this Debt, though he paid others their whole Demand with Intereſt.

My Lords, The Witneſs, who was called to prove this, did by no means come up to what was opened: He did, indeed, ſay, That he was informed, That *Wilſon* had paid ſome Perſons their whole Debt; but he, at the ſame Time, acquainted your Lordſhips, That theſe were ſmall Debts; and that he did not pay them out of his own Effects, but from a Supply adminiſtred by a Friend, only to give him a Credit at his ſetting up again; and the unfortunate End of this Man (of which I am juſt now informed) is an unanſwerable Proof of his Inability to pay the Whole.

My Lords, As a further Argument to prove the Reaſonableneſs of this Compoſition, I beg Leave to appeal to another Part of the Evidence produc'd on this Article by the Managers of the Houſe of Commons; whereby it appeared, That Mr. *Wilſon*'s Books were peruſed by two Maſters, and himſelf was put upon his Oath; and that he ſwore the Compoſition he then offered, was all he was able to make; which I humbly ſubmit to your Lordſhips, as an Anſwer to what an Honourable Manager was pleaſed to object, when he inſiſted, that there ought to have been a Commiſſion of Bankruptcy againſt *Wilſon*, that thereby his Effects might have been diſcovered upon Oath.

My Lords, There were many other Creditors of Mr. *Wilſon*'s, beſides Mr. *Dormer*, who might have applied for a Commiſſion of Bankruptcy, if it would have been for their Advantage; but, as every-body is acquainted with the great Expence and Delay of ſuch a Procedure, I believe they will be thought to have taken the wiſeſt Courſe: Here was all the Benefit of a Commiſſion, by the putting *Wilſon* upon his Oath, and none of the Expence and Delay that attend ſuch an Inquiry.

My Lords, Another Thing opened, and not proved, is, That at the Time of this Compoſition, *Poulter*, who was *Wilſon*'s Debtor, was worth nothing: It is true, my Lords, he was afterwards in Execution, and eſcaped; but if we make it appear to your Lordſhips, That at the Time of the Compoſition he was a viſible Perſon, and not ſuſpected, I humbly hope, whatever has happened ſubſequent to the Compoſition, will be no Ingredient in ſhewing it to have been a trifling and precarious one at the Time of making it.

My Lords, I beg Leave humbly to obſerve, That the Honourable Managers have not been pleaſed to inſtance, how the Suitors would have been in a better Condition, in caſe this Compoſition had not been made: Could they have ſhewn your Lordſhips, that if Part of the Debt had not been taken, the Whole might have been obtained, I muſt confeſs, there would have been ſome Reaſon to have called this a trifling Compoſition; but, ſince nothing of that Nature has been attempted, I muſt ſubmit the whole Tranſaction, upon what I have already offered, to have been a Tranſaction moſt for the Advantage of the Suitors, conſidering the Circumſtances that attended this Compoſition.

My Lords, An Honourable Manager, who ſpoke Second upon this Article, was pleaſed to ſay, That by this Compoſition the Suitors were

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tied down to a certain Loſs of Half their Demand. My Lords, I humbly apprehend the Conſequence to be directly otherwiſe; and that the Suitors are not tied down at all: As they were no Parties to the Compoſition, they were not bound by it; nor is Mr. *Wilſon*, by this Compoſition, in any degree diſcharged as to the Suitors of the Court; ſo that if *Wilſon* be able to pay the Whole, he is ſtill as liable to the Demands of the Suitors, as if this Compoſition had not been made; and if this be ſo, it will be to the Advantage of the Suitors, that they had no Notice, which, however, I apprehend, was, in the Nature of the Thing, impracticable.

My Lords, It was inſiſted upon, That the Petitions, and Orders, and Reports on this Occaſion, were in an unuſual and clandeſtine Manner; and a Certificate has been read to your Lordſhips to prove, That they were never filed and regiſtred, as is uſual in other Caſes: But do they, my Lords, pretend to ſay, That this was by the Order, or with the Privity of the Earl of *Macclesfield*? The Buſineſs of a Chancellor, is to make Orders; but I never yet heard it was his Duty to ſee them drawn up and regiſtred; and therefore, if there was any thing unuſual in this, it is not to be imputed to the Neglect of the Noble Earl, unleſs it was proved to have been by his expreſs Direction.

My Lords, It has already appeared, that this Compoſition, and the Proceedings upon it, did not proceed *from* the Noble Earl; but were propoſed *to* him; Mr. *Edwards* did acquaint your Lordſhips, That it was himſelf, who firſt propoſed it to the Earl, after having adviſed with Mr. *Hiccocks*, who put him into that Method.

This, my Lords, is the Nature of our Defence againſt the 13th and 14th Articles of the Commons Charge: We humbly hope the ſeveral Steps that were taken, will appear to have been for the Benefit and Advantage of the Suitors, and with no other View, than the ſecuring them their whole Demand; that the Compoſition ſo much complained of, was given into, only as a Means towards the attaining that End, and could in no Event be prejudicial to the Suitors of the Court, as the Gentlemen of the Houſe of Commons would repreſent it to your Lordſhips.

Mr. *Dormer Parkhurſt* ſworn.

Mr. Serj. *Probyn*. My Lords, we deſire Mr. *Parkhurſt* may be asked, What Converſation paſſed between him and Mr. *Dormer*, previous to his going Abroad, and upon what Occaſion he was obliged to go Abroad?

Mr. *Parkhurſt*. Mr. *Dormer* came to me about the latter End of *November*, 1720, at my Chambers. I had then ſome-body elſe with me; upon that Account he ſaid nothing to me, but deſired I would come next Morning early to him. I went, and when I came to him (he lived then in Chambers in *Lincoln*'s-*Inn*) he ſhut the Door, and told me, he had a Thing of great Importance to communicate to me in Relation to himſelf; and then told me, he deſigned to go Abroad: He ſaid Mr. *Wilſon*, his Goldſmith, the Day before had been with him (this was on a *Sunday* Morning, and he had been with him the *Saturday* before) and had acquainted him, That the *Monday* following he ſhould be obliged to ſhut up Shop, and ſtop Payment: He had a great deal of Money in his Hands, and he was afraid, that as ſoon as it was known, that Mr. *Wilſon* was unable to pay; the Sollicitors, and Practicers belonging to the Court, who knew he kept Mr. *Dormer*'s Caſh, would immediately be alarmed; and that Application would be made thereon, to my Lord Chancellor; and he believed, that the firſt Thing to be done, in relation to himſelf, would be to confine him; and that there would be an Order for his being committed; and therefore to prevent that (for he could not live a Week without Air and Liberty) he was reſolved to withdraw himſelf, and retire to ſome Place or other. Upon this, I expreſſed a great deal of Concern, and endeavoured to perſuade him againſt it: I deſired him to make his Circumſtances known to my Lord Chancellor and the Maſters: He ſaid No; he was ſure the Conſequence would be his Confinement, and was come to a Determination with himſelf, to ſecure his Perſon; his Uneaſineſs, was from the Fear, that he ſhould be confined; but he would leave every thing fairly behind him, and hereafter come over and obey any Order from my Lord Chancellor; but the firſt Thing he would do, he was reſolved to withdraw, to ſecure himſelf from being Confined.

Mr. *Serj. Probyn*. What happened after he was gone Abroad? and what Notice was taken of it?

Mr. *Parkhurſt*. In a little time after this, I underſtood he had put this Reſolution in Execution, and had withdrawn himſelf. He had deſired me, that I ſhould not mention it to any Body; and gave out by his Clerk, that he was gone into the Country. I did, after this, in about three Weeks, receive a Letter from him, that he was then at *Rotterdam*; and there was a Letter incloſed, which he deſired me to ſhew to ſome of the Maſters. I think I ſhewed it to Mr. *Rogers*; afterwards, according to his Directions in the Letter to me, I carried it to Mr. *Cottingham*. It was directed to Mr. *Cottingham*, who was then Secretary to my Lord Chancellor; I carried the Letter to him, and left it with him.

Mr. *Serj. Probyn*. If you can, recollect what were the Particulars of that Letter, the Contents of it, relating to any Terms of his coming over again.

Mr. *Parkhurſt*. It is a great while ago; I have but a faint Remembrance of it; but I think it was much to the ſame Purpoſe with what he communicated to me at firſt, after he had acquainted me with the unhappy Affair, as hath been mentioned. He ſaid he had a great Sum of Money in Mr. *Wilſon*'s Hands; and when he found *Wilſon* unable to pay, he was apprehenſive of an immediate Confinement, which he could not poſſibly bear; therefore he had withdrawn himſelf; but that he had left his own Eſtate intire behind him, and every thing relating to the Suitors; and he was willing to come over to give an Account of the State of the Office, and of his own Eſtate; and he was willing to make over all his own Eſtate, to anſwer the Deficiency of the Office, as far as it would go, and to do every thing the Court ſhould think fit to order him, provided he might have his Liberty both before and after: He deſired he might not be confined, and he would do every Thing that the Court would order him to do, or ſhould be deſired of him, as much as if he was confined.

Mr. *Serj. Probyn.* We desire he may be asked, If he knew how it was, that Mr. *Wilson* came to have so much of Mr. *Dormer*'s Effects in his Hands, and upon what Account?

Mr. *Parkhurst.* I did not know, till this Affair happened of *Wilson*'s failing, what Money he had in his Hands belonging to Mr. *Dormer*. I used to see Mr. *Wilson* with him; I knew Mr. *Wilson* had Cash of his in his Hands; but afterwards, by way of Justification of himself, for losing so much Money, I heard him say, It was an unlucky Accident, he had a considerable Sum of Money paid into his Hands, by Order of Court, and a considerable Sum, which came in upon the Land-Tax, and he did not know at that Time, what to lay it out in; the Stocks were so High and Precarious, he would not buy any; and he thought *Wilson*'s Hands as safe a Place as any at that Time; he could not keep it by him in his Chambers, and he was going into the Country for three or four Weeks; and when he saw Things were settled, then he would lay it out: But when he came back to Town, he found Mr. *Wilson* in those declining Circumstances. This was after he returned from *Holland*. I knew nothing before of this, nor that he had any great Sum of Money in his Hands.

Mr. *Serj. Probyn.* He saith that he did propose, That he would come over and make a Discovery of, and deliver up his Effects, in case his Person was secured; now I desire he may recollect, before he did come over, if he knew of any Steps taken to secure his Effects; and whether any Thing in his Chambers was taken Care of, and by whom?

Mr. *Parkhurst.* I can give but one Instance of it, that is, Mr. *Rogers*, a Master in *Chancery*, came to me one Morning, and desired me, upon the Account of being a Relation, for I was no otherwise concerned, that I would go along with him to look into Mr. *Dormer*'s Chambers, to see that there was, what Securities, or any thing of what Nature belonging to the Office. I remember we did find several Things, several Land Tax Tallies which Mr *Rogers* gave an Account of. I don't know what the Number was.

Mr. *Serj. Probyn.* Who took Possession of them?

Mr. *Parkhurst.* Mr. *Rogers*, the Master in Chancery.

Mr. *Serj. Probyn.* By whose Direction did you understand that Mr. *Rogers* took this Care?

Mr. *Parkhurst.* I understood it was by the Direction of the Court. He came to me, and desired me to go along with him, to see that no Person meddled with any Thing but what belonged to the Suitors; and he took them, and locked them up in his Closet or Scrutore.

Mr. *Serj. Probyn.* My Lords, we have done with this Evidence.

Mr. *Plummer.* I think he says, the Reason of Mr. *Dormer*'s having so much Money in the Hands of Mr. *Wilson*, was, that there was a great Sum of Money come in upon the Land-Tax: I desire to know, if Mr. *Dormer* left this Money dead in the Hands of Mr. *Wilson*, or if he had any Interest for it?

Mr. *Parkhurst.* I know nothing of that. By way of Justification, he said, It was unlucky he had so much Money paid into his Hands at that Time; Times were so precarious, he did not know how to lay it out.

Mr. *Serj. Pengelly.* I desire he may be asked, Whether Mr. *Wilson* did not usually keep Mr. *Dormer*'s Cash, and the Cash of the Office?

Mr. *Parkhurst.* I believe he did. I know but few Instances of it.

Mr. *Serj. Pengelly.* Whether he never heard him declare that Mr. *Wilson* paid him Interest?

Mr. *Parkhurst.* I never heard him declare he did: He never spoke to me about it particularly.

Mr. *Lutwyche.* I desire he may be asked, Whether he can inform your Lordships, how long Mr. *Wilson* had been Banker to Mr. *Dormer*?

Mr. *Parkhurst.* I can't say exactly how long: I believe some Years.

Mr *Com. Serj.* If the Gentlemen have done with this Witness, we beg leave to call another, to prove what Care was taken to stop those Effects, that were in the publick Funds.

Mr. John Elphinstone *sworn.*

Mr. *Com. Serj.* My Lords, we desire that Mr. *Elphinstone* may inform your Lordships what he knows of any Orders or Directions given, in relation to the Effects of Mr. *Dormer* that were in the Publick Funds; and by whom those Directions were given?

Mr *Elphinstone.* My Lords, I have been to search the Books of the Bank, the *South-Sea*, and *East-India* Companies, to see what Stock *Fleetwood Dormer*, Esq; one of the Masters of the Court of *Chancery* had in the Books of those Companies, and what Orders there were for stopping Mr. *Dormer*'s transferring such Stock. My Lords, I went first to the Bank, and searched a Book of that Company, called a *Leidger*, where Mr. *Dormer*'s Accompt was stated by way of Debtor and Creditor. I found in that Book, a *Memorandum* written over Mr. *Dormer*'s Account in red Letters, as follows, *Q. No Transfer.* I likewise enquired, if there were any Orders of the Court of *Chancery*, for stopping the Transfer of such Stock? I was told by the Clerk, That he knew of none. I enquired of the Clerk at the Transfer-Office, if there was any Order of the Court of *Chancery* for transferring Mr *Dormer*'s Stock to Mr. *Edwards*, the succeeding Master; after some search, he brought me an original Order, Signed *Parker*, C. dated 11. *July*, 1721. I have a Copy of that Order in my Hand, whereby it appears, that all the Stock and Annuities, in the Name of Mr. *Dormer*, were ordered to be transferred to Mr. *Edwards*, on the 12th of *July* 1721, *viz.* the Day after the Date of the said Order. I found in the Transfer Book of that Company the Sum of 3393 *l.* 16 *s.* transferred by Mr. *Dormer* to Mr. *Edwards*, and Mr. *Edwards*'s Acceptance of the same. This is a Copy of the original Order. I afterwards went to the *South-Sea* House; I searched the Books of that Company, and in the Book marked Letter *D.* N°. 6. Folio 430. where Mr. *Dormer*'s Accompt is stated by way of Debtor and Creditor, I found a *Memorandum* over Mr. *Dormer*'s Account, which is as follows; *Stock not to be transferred without Order from the Court of Directors (he being failed) or from the Court of* Chancery. I also searched the Transfer-Book of the said Company; and I found in Book No. 5. Page 86. that on the 12th Day of *July* 1721. 2251 *l.* 14 *s.* *South Sea* Stock was transferred by Mr. *Dormer* to Mr. *Edwards*, and under the Transfer I saw Mr. *Edwards*'s Acceptance; Mr. *Dormer* signed the Transfer, and Mr. *Edwards* signed the Acceptance. I enquired if there were any Orders for stopping Mr. *Dormer*'s Stock from being transferred.

ferred. I found no ſuch Order, nor any Order for transferring the Stock that was transferred; and the Reaſon which the Clerk of that Office gave, was, That upon the unhappy Turn of the Affairs of that Company, ſeveral of the Clerks being diſcharged, and many Books and Papers being deſtroyed, loſt, or miſlaid, and the reſt in the utmoſt Confuſion, rendered it impoſſible to find any ſuch Paper at this Diſtance of Time. I went likewiſe to the *Eaſt-India* Company; but I could not find upon thoſe Books any Stock belonging to Mr. *Dormer*, or that he had any Intereſt in that Company.

Mr. *Strange*. I beg Leave to take Notice of one Thing he ſays, relating to the Words expreſly entered in one Leidger Book; it ſtands that Mr. *Dormer* ſhould not transfer any Stock, he being failed.

Mr. *Elphinſtone*. Yes, the *Memorandum* entred in the *South Sea* Leidger Book, is, as follows: *Stock not to be transferred without Order from the Court of Directors (he being failed) or Court of Chancery*; the Words, *he being failed*, are in a Parentheſis, and then follow the Words, *or Court of Chancery*.

Earl of *Macclesfield*. Who was then Governor of the *Bank*?

Mr. *Elphinſtone*. I think Mr. *Hanger* was.

Mr. Serj. *Probyn*. Were the Entries dated?

Mr. *Elphinſtone*. There was no Date to any of the *Memorandums*; they are wrote juſt over Mr. *Dormer*'s Account, and under a Line drawn to ſeparate Mr. *Dormer*'s Account from another Perſon's.

Mr. Serj. *Probyn*. Was that before the Transfer made to *Edwards*?

Mr. *Elphinſtone*. There is no Date to the *Memorandum* for ſtopping the Transfer of Mr. *Dormer*'s Stock; but it muſt be before the Transfer.

Mr. Serj. *Probyn*. But the Entry in the Books, was it precedent or ſubſequent to the Transfer?

Mr. *Elphinſtone*. When I ſearched for the Account, I found the Account and the *Memorandum* for ſtopping the Transfer of the Stock, placed over it, in a Book called the Leidger, and when I ſearched for the Transfer of the Stock, I found that in the Transfer-Book, which is a different Book.

Mr. Serj. *Probyn*. What Transfer-Book was it?

Mr. *Elphinſtone*. It was the Transfer-Book No. 5. in Page 86. where I found Mr. *Dormer*'s Transfer, and Mr. *Edwards*'s Acceptance; but the Leidger is quite a different Book. It was in the Leidger marked D that I found the *Memorandum* for ſtopping the Transfer of Mr. *Dormer*'s Stock over his Account; but I could not tell what Day of the Month it was entred; there were promiſcuous Dates in the Year 1720, 21, 22, 23, and 24. to ſeveral Articles of that and other Accounts, but no Date to the *Memorandum* at the Head of his Account. I took this Copy of it, which I have in my Hand.

Mr. *Lutwyche*. I deſire to aſk one Queſtion, which, indeed, is to explain, what he mentioned concerning an Order, that I think, he takes to be ſigned by my Lord Chancellor. I deſire to know the Date of it?

Mr. *Elphinſtone*. It was a looſe Order brought to me, dated 11 *July* 1721.

Mr. *Lutwyche*. Who brought it?

Mr. *Elphinſtone*. It was brought to me by a Clerk that belongs to the Transfer-Office at the *Bank*.

Mr. *Lutwyche*. Was that Original Order left in the Book?

M. *Elphinſtone*. No, my Lords, I ſaw no Book of Orders; It was a ſingle Order brought to me.

Mr. *Lutwyche*. You ſay there was an Order ſigned *Parker* C. was there any ſuch Order drawn up by the Regiſter of the Court?

Mr. *Elphinſtone*. I know nothing of its being drawn up by the Regiſter. I ſaw *Parker* C. Signed to an Order; and I believe it was the noble Earl's Hand.

Mr Serj. *Pengelly*. He hath a Copy of it; I believe it is proper to put it in, or that it may be read.

Mr. *Lutwyche*. Mr. *Elphinſtone* may read it to your Lordſhips.

Mr. *Elphinſtone* reads. *Martis* 11 *July* 1721. "I do order, that all the *Bank* Stock and Annuities "therein ſubſcribed, belonging to *Fleetwood Dormer*, "Eſq; late one of the Maſters of this Court, be by "him forthwith transferred to *Henry Edwards* the "ſucceeding Maſter" *Parker* C.

To the Governor, Deputy Governor and Directors of the Bank of England.

Mr. Serj. *Pengelly*. We deſire he may be aſked Whether he heard any Thing of Mr. *Dormer*'s being gone to take the Air?

Mr. *Elphinſtone*. No, my Lords, I never did, upon my Oath.

Mr. Serj. *Pengelly*. Whether he did not hear the Earl of *Macclesfield* make a Declaration to that Purport?

Mr. *Elphinſtone*. I do not remember that the Noble Lord ever made any ſuch Declaration.

Mr. Serj. *Pengelly*. He mentioned ſeveral Orders he found in the Books of the *Bank*, as I apprehended him; whether was there any other Order under my Lord *Macclesfield*'s Hand?

Mr. *Elphinſtone*. No, I ſaw but one Original Order, ſigned by the Noble Earl, of which, this is a Copy in my Hand.

Mr. *Lutwyche*. This was an Order und r my Lord's Hand, a conſiderable Time after: I deſire he may be asked, whether he hath heard of any Order directed to the Governor, Deputy Governor, *&c.* of the *Bank*, and ſign'd by the Chancellor, and that Original Order left there?

Mr. *Elphinſtone*. My Lords, I would be very cautious of ſaying any Thing that I do not remember; but I do remember ſomething of a Diſcourſe of an Order given for ſtopping of *Dormer*'s Stock and Effects about the Time of Mr. *Dormer*'s abſconding, but when it was I can't tell.

Mr. *Lutwyche*. He did not underſtand me: My Queſtion is, Whether or no he hath ever heard of any Order directed to the Governor, *&c.* of the *Bank*, and ſigned by the Chancellor, and that Original Order left there?

Mr. *E phinſtone*. No, my Lords, I don't ſay I heard of any other Order, ſigned by my Lord Chancellor, and directed to the Governor, *&c.* of the *Bank*; but I heard an Order was given by my Lord, to ſtop *Dormer*'s Stock.

Mr. *Lutwyche*. I only ask, Whether in this, or any other Inſtance, my Lord Chancellor made Orders to the *Bank*, to be left there?

Mr. *Elphinſton*.

Mr. *Elphinſtone.* I don't know what Orders are made; it was out of my Province; I had nothing to do with that; my Buſineſs was quite another Thing.

Mr. Serj. *Probyn.* I would beg Leave to take Notice of one Obſervation, that has been made on the Evidence given in Relation to the Order of the late Lord Chancellor, as tho' it was unuſualto direct any in that manner to the *Bank*; but to that I beg Leave to anſwer, that this was not an Order of Court; but only a particular Direction, which he, in his private Capacity, ſent to that Company, out of his great Care to ſecure the Effects of the Suitors; and this, I apprehend, fully clears him of the Objection made to him of Neglect to do it in his judicial Capacity.

Mr. *Com. Serj.* Your Lordſhips cannot chooſe but obſerve, that this very Thing implies ſome Caution taken, that theſe Effects of Mr. *Dormer*'s ſhould not be transferred without the Privity of the Great Seal: This Order, we apprehend, was for that Purpoſe; and to make this plain, we ſhall ſhew, that Mr. *Cottingham* went from my Lord Chancellor about this Matter.

Mr. *Cottingham.*

Mr. Serj. *Probyn.* We deſire Mr. *Cottingham* may be aſk'd, How he came to have Notice, and from whom, of Mr. *Dormer*'s withdrawing himſelf; and what Care was taken to ſecure his Effects?

Mr. *Cottingham.* Soon after *Chriſtmas*, 1720. to the beſt of my Remembrance, as to the Time, Mr. *Parkhurſt*, Mr. *Dormer*'s Nephew, came to me, and told me, his Uncle, Mr. *Dormer*, had withdrawn himſelf into *Holland*; and the Reaſon was, upon Account of his having left Money and Effects belonging to the Suitors, in Mr. *Wilſon*'s Hands, and Mr. *Wilſon* had been very unfortunate in the *South-Sea* Year, and was likewiſe gone off. I acquainted the Earl of what paſſed. The Earl directed me to attend the two Senior Maſters, Mr. *Hiccocks* and Mr. *Rogers*, and conſider what was proper to be done on that Occaſion: On Conſideration, we agreed, that it was neceſſary to get Mr. *Dormer* over.

We then conſidered, that it was not poſſible to have him over, unleſs he was ſecure of his Liberty. A Propoſal was made to the Earl, that in caſe he came over, he ſhould have his Liberty: The Earl agreed to it. In the mean Time, to the beſt of my Remembrance, Orders were given for ſearching of his Office, and ſecuring what Effects and Papers were there. The Maſters told me, that purſuant to theſe Directions, they had ſearched his Office, and lock'd up what they found there; but his Effects there were of very little Value.

The next Step the Earl took, was, he directed Perſons to go to the *Bank* and *South-Sea* Houſe, to ſtop the Transferring of any Stock or Effects in his Name.

In *April* following, when Mr. *Dormer* returned, he came late to me one Evening, and asked me, If the Letter writ by the Maſter, was writ by the Earl's Direction? I told him Yes. He then asked me, If the Earl had promiſed his Liberty? Otherwiſe he would be gone again.

I told him the Earl had promiſed him his Liberty, if he would make a full Diſcovery of all his Effects upon Oath; and make over all he had to the two Senior Maſters, for the Benefit of the Suitors of the Court; and aſſiſt them in getting in every Thing that belonged to him.

He ſaid, theſe Conditions he readily ſubmitted to, and would attend the Maſters accordingly. I ſpoke to Mr. *Rogers*, to know whether he would have an Order in Form to examine Mr. *Dormer* upon Interrogatories; and that, if he would, I would prepare one, and get it ſign'd. He told me, It was not neceſſary; and that they thought it was beſt to get the Eſtate and Effects in the firſt Place before that ſhould be done; fearing if Mr. *Dormer* was ſeverely dealt with, he ſhould run away, and an Order might be had afterwards, if neceſſary. I forgot to tell your Lordſhips one Circumſtance: Some time, in the Summer following, either in *July* or *Auguſt*, I happened to dine one Day at the *Blue-Poſts*, behind *Lincolns-Inn*. Mr. *Dormer* came to me with Tears in his Eyes; he cried bitterly, and ſaid, That the Maſters had ſtripp'd him of all he had in the World, and begg'd I would intercede with the Earl to allow him ſomething. I deſired him not to inſiſt upon it; for his Effects, as I was inform'd, were not ſufficient to pay his Debts, and he knew well, that the Earl could not give away the Effects of the Suitors; It was out of his Power.

Mr. *Plummer.* I think you ſay, Sir, That Mr. *Dormer* failed, by leaving his Money and Effects in Mr. *Wilſon*'s Hands; I deſire to ask him, What he means by his Effects?

Mr. *Cottingham.* The Money and Effects belonging to the Suitors of the Court.

Mr. *Plummer.* And you told my Lord of that?

Mr. *Cottingham.* Yes, I told my Lord what Mr. *Parkhurſt* had mention'd of the Money and Effects of the Suitors of the Court being left in *Wilſon*'s Hands.

Mr. *Com. Serj.* I deſire he would inform your Lordſhips, whether or no, upon this Occaſion and Tranſaction, he applied to the Maſters to make up this Deficiency of Mr. *Dormer*'s?

Mr. *Cottingham.* As to the Deficiency of Mr. *Dormer*, I always apprehended and underſtood, that the Maſters would make good that Deficiency, Mr. *Lightboun* excepted, who always declared, he would do nothing towards it, unleſs it were put on another Foot.

I

Mr. *Com. Serj.* I desire he may be asked whether he gave any such Information to the Earl of *Macclesfield*?

Mr. *Cottingham.* I did so, I told the Earl of it; and to the best of my Remembrance Mr. *Hiccocks* and Mr. *Rogers*, my Lords, I wont be positive, but I think Mr. *Hiccocks* and Mr. *Rogers* did order me to wait upon the Earl, and let his Lordship know that the Body of the Masters had undertaken to make up the Deficiency; I do think so, I will not be positive of that, I think it was so.

Mr. *Com. Serj.* I desire he may inform your Lordships, if he knows how it came to pass that Mr. *Dormer* had Money in Mr. *Wilson*'s Hands?

Mr. *Cottingham.* Mr. *Parkhurst* told me, and I think Mr. *Dormer* likewise, but of that I am not certain, that Mr. *Dormer* had left the Money in his Hands when he went into the Country in the long Vacation.

Mr. *Onslow.* I desire he may be asked what were the Words that Mr. *Rogers* and Mr. *Hiccocks* said to him when he apprehended the Masters would make good the Deficiency?

Mr. *Cottingham.* I think it was what I told your Lordships, that the Body of the Masters would make good the Deficiency, I do not, I cannot swear that positively.

Mr. *Onslow.* Did any other of the Masters tell you so?

Mr. *Cottingham.* Mr. *Godfrey* told me, I am positive of this, that Mr. *Godfrey* told me that the Body of the Masters would make good the Deficiency, I must except Mr. *Lightboun.*

I have heard Mr. *Edwards* say, that he would never have paid his 5000*l.* if he had not apprehended that it would have been made good.

Mr. *Com. Serj.* This makes it necessary for us to ask another Question, and I desire he may be asked, tho' he doth not remember the particular Words, yet whether they induced him to believe that they intended so to do?

Mr. *Cottingham.* It did.

Mr. *Com. Serj.* Whether upon this Belief he did inform the noble Earl that they would make good Mr. *Dormer*'s Deficiency?

Mr. *Cottingham.* I did, I told the noble Earl so, and that his Lordship needed not to be uneasy, they would make it good, and I always apprehended, I always understood they would make it good.

Mr. *Lutwyche.* I desire he may be asked whether the Deficiency of Mr. *Dormer* was ever stated so as to know how much it was?

Mr. *Cottingham.* No.

Mr. *Lutwyche.* Did they agree to make up the Deficiency when they did not know how much it was?

Mr. *Cottingham.* I heard some of the Masters say at first, that it was 17000*l.* or 18000*l.* afterwards they said 20000*l.* and then 22000*l.* and of late it comes out to be 26000*l.*

Mr. *Lutwyche.* If I understand Mr. *Cottingham* right, he speaks of several Masters, I desire to know whether he means all, except Mr. *Lightboun?* I desire to know whether they all singly promised?

Mr. *Cottingham.* Singly, as I remember; Mr. *Edwards* can tell I was at a Meeting with them at the Tavern, I think they said singly.

Mr. *Serj. Pengelly.* I desire he may be asked whether this Discourse with the Masters about paying this Deficiency was absolute or upon some particular Terms or Conditions of paying the Money?

Mr. *Cottingham.* Mr. *Edwards* told me that they would make good the Deficiency, provided they continued on the old Foot as usual.

Mr. *Serj. Pengelly.* That is, to have the Disposal of the Money, the Money to be in their Hands?

Mr. *Cottingham.* Yes.

Mr. *Lutwyche.* I desire to know whether you acquainted the Earl of *Macclesfield* with this?

Mr. *Cottingham.* No, this was but lately that Mr. *Edwards* told me that. It was, I believe, in *November* or *December* last.

Mr. *Lutwyche.* Did none of the other Masters acquaint you so?

Mr. *Cottingham.* No, I don't remember any other Master did.

Mr. *Lutwyche.* I desire to ask you whether you ever heard what Interest Mr. *Wilson* allowed to Mr. *Dormer?*

Mr. *Cottingham.* In *December* last, when the Accompts were before the Judges, the Earl told me that Mr. *Wilson*'s Composition was complained of; it was said, that Mr. *Wilson* had paid 20*s.* in the Pound; and ordered me to talk with Mr. *Wilson*; and accordingly I did see him, and blamed him for imposing upon the Masters in the Composition he made with them, when he had paid other Creditors whole Demand; he denied it.

Mr. *Lutwyche.* That is not the Question; what Interest did Mr. *Wilson* allow Mr. *Dormer* for the Suitors Cash?

Mr. *Cottingham.* I am going on to that Part. Mr. *Wilson* said to me; why is all the Blame laid upon me? I allowed Mr. *Dormer* very large Interest for his Money: I could have set aside his Debt upon the Score of an usurious Contract; I was resolved I would not do it, I would shew my self to all the World to be an honest Man; I gave my Creditors all that I had, what would they have more?

Mr. *Lutwyche.* Whether he mention'd Ten *per Cent.* or no?

Mr. *Cottingham.* No, he did not, but he said he had given large high Interest, and the Court had had as much as his other Creditors.

Mr. *Com. Serj.* When was this Discourse?

Mr. *Cottingham.* It must have been in *December* last, when the Judges were inquiring into this Matter, because he told me Mr. *Edwards* had been with them about the Composition.

Mr. *Serj. Probyn.* Recollect what was said upon this Discourse, whether he said that the Court or the Masters had as much as any of his other Creditors?

Mr. *Cottingham.* He told me, I am an honest Man, the Masters had as much as my other Creditors, what would they have more?

Mr. *Serj. Probyn.* It is our Misfortune we can't produce Mr. *Wilson* here, we are deprived of his Evidence, which would have been very material, by his Death; we are told he has very lately shot himself.

Mr. *Cottingham.* He was very poor, I always looked upon him to be an honest Man; he told me at the same time, I forgot to tell your Lordships, if Mr. *Poulter* could be but delivered up, he should be very easy; he was sure he was in Circumstances

to pay him.

Mr. *Com. Serj.* My Lords, if the Gentlemen have done with this Witneſs, we deſire to call a Witneſs or two in relation to the fourteenth Article to ſhew the Credit of *Poulter* when his Debt was aſſigned. We apprehend that a little Evidence will ſerve to clear up the Innocence of this noble Earl on this Occaſion: The great Concern the noble Earl had to make up this Deficiency of Mr. *Dormer*, made him with the beſt of his Knowledge and Power apply thereto; a little Evidence will make it appear, that however unfortunate it was in the Conſequence he did it to make the moſt he could for the Suitors of the Court.

Mr. *Hunt* Sworn.

Mr. *Com. Serj.* My Lords, we call this Witneſs to prove the two Judgments, the one againſt *Poulter*, to ſhew that there was a real Debt due from *Poulter* to *Wilſon*; the other is a Copy of a Judgment by *Wilſon* againſt the Marſhal of the King's Bench, for the Eſcape of *Poulter*.

Mr. *Hunt.* My Lords, I examined theſe two Copies of Judgments with the Records in the Court of King's Bench. They are true Copies of the Judgments.

Mr. *Com. Serj.* I deſire he may be asked whether he was the Attorney for Mr. *Wilſon?*

Mr. *Hunt.* I was the Attorney for Mr. *Wilſon* in that againſt *Machen*, and entred up the Judgment in the other.

Mr. *Com. Serj.* Is it your Lordſhips Pleaſure that the Judgment ſhould be read at large?

Mr. *Serj. Probyn.* Read only a Word or two of the Judgments, the Names of the Plaintiff and Defendant, the Money demanded, and the Sums recovered.

Clerk reads the Beginning and Ending.

Memorandum quod alias, ſcilicet Termino Sancti Hilarii ult' præterit' coram Domino Rege ven' Willielm' Wilſon verſus Edvardum Poulter—Ideo conſiderat' eſt quod prædict' Willielm' recuperet verſus præfat' Edvardum Poulter damna ſua, quæ quidem damna in toto ſe attingunt ad octodecim mille ſeptingent' & ſexagint' libras duodecim ſolid' & quinq' denar'.

Mr. *Serj. Probyn.* The firſt is againſt *Poulter.*

Mr. *Lutwyche.* Look when the Judgment was ſigned.

Mr. *Hunt.* It was ſigned 22 *Dec.* 1721.

The Judgment read againſt *Machen.*

Placita coram Domino Rege apud Weſtm' de Term' Sancti Michaelis, undecimo Georgii. Memorandum quod Willielm' Wilſon — protulit — billam — verſ' Richardum Machen — de placito debiti — quod reddat ei octodecim mille ſeptingent' octogint' & un' lib. —— Ideo conſiderat' eſt quod præd' Willielm' Wilſon recuperet &c.

Judgment ſigned 27 *Nov.* 1724.

Mr. *Com. Serj.* If your Lordſhips pleaſe he may be asked if he knows of any Offer made by *Poulter* for a Compoſition, and what Sum of Money was offered, and how Mr. *Wilſon* behaved himſelf on that Occaſion.

Mr. *Hunt.* I don't know of any Compoſition offered of my own Knowledge, I have heard the preſent Marſhal of the King's Bench ſay there was 1000*l* offered; but I had Orders from my Client, if any Offer was made to me, not to accept it, but to refer the Perſon who made it to him.

Mr. *Com. Serj.* As Mr. *Wilſon* is dead, I deſire Mr. *Hunt* may be asked whether Mr. *Wilſon* gave any Reaſon for that Order not to compound with him?

Mr. *Hunt.* Mr. *Wilſon* hath often ſaid that it was his Opinion Mr. *Poulter* was able to pay him.

Mr. *Com. Serj.* We have done, my Lords, with this Witneſs.

Mr. *Serj. Probyn.* My Lords, we beg Leave to call a Witneſs to ſhew that at this time Mr. *Poulter* had the Reputation of being a Man of Subſtance, and an honeſt Man?

Mr. *Peter Gandy* Sworn.

Mr. *Serj. Probyn.* My Lords, I deſire Mr. *Gandy* may give your Lordſhips an Account whether Mr. *Poulter* had not the Reputation of being a ſubſtantial Man about the year 1722 or 1723.

Mr. *Gandy.* Mr. *Poulter* always lived in good Reputation, and was reputed to be an honeſt Man; he lived at *Hackney*, he told me he purchaſed 6000*l.* South-Sea Stock, which coſt him 36000*l.* and transferred it to Mr. *Knight*, and Mr. *Knight* gave him nothing for it.

Mr. *Serj. Probyn.* I deſire to ask you whether he was a ſubſtantial honeſt Man?

Mr. *Gandy.* I believe he was, he always bore an extraordinary Character, I believe I might ſummon all *Exchange-Alley*, and they would ſay the ſame; he was reputed to be worth a great deal of Money and a very honeſt Man.

Mr. *Lutwyche.* At what time was this that he was thought a Man of Subſtance?

Mr. *Gandy.* When he lived at *Hackney.*

Mr. *Lutwyche.* After he was arreſted?

Mr. *Gandy.* Yes.

Mr. *Lutwyche.* Will you ſay after he was arreſted he was a ſubſtantial Man?

Mr. *Gandy.* No, my Lords, I do not ſay he was, but he was generally reputed to be ſo.

Mr. *Lutwyche.* Whether at the ſame time you mention that he told you the Circumſtance of transferring Stock to Mr. *Knight*, that was not given as a Reaſon for his Deficiency.

Mr. *Gandy.* He ſaid he had been able to pay Mr. *Wilſon* every Farthing, if Mr. *Knight* had not gone away.

Mr. *Lutwyche.* That is what Mr. *Poulter* told Mr. *Gandy.*

Mr. *Serj. Pengelly.* I deſire he may be asked when *Poulter* was firſt known to be in a failing Condition?

Mr. *Gandy.* I don't know

Mr. *Serj. Pengelly.* When was he arreſted?

Mr. *Gandy.* I don't know, he told me he ſhould have been able to have paid Mr. *Wilſon*, if Mr. *Knight* had not gone away.

Mr. *Serj. Pengelly.* Did he give you that as a Reaſon why he could not pay Mr. *Wilſon?*

Mr. *Gandy.* Mr. *Knight* not paying him, he ſaid he could not pay Mr. *Wilſon.*

Mr. *Serj. Pengelly.* Was that the Reaſon?

Mr. *Gandy.* Here is another Gentleman will tell you he was employed to make a Compoſition with Mr. *Wilſon*, and he can tell you more.

Mr. *Onſlow.* What was *Poulter*'s Profeſſion?

Mr. *Gandy.* He was a Servant to Mr. *Stroud.*

Mr. *Onſlow.* What is Mr. *Stroud?*

Mr. *Gandy.* Mr. *Stroud* is a Sworn Broker.

Mr.

Mr. *Onſlow.* I deſire to know what Profeſſion this Perſon is of?

Mr. *Gandy.* I tranſact in *Exchange-Alley* as a Broker.

Mr. *Lutwyche.* Did not Mr. *Poulter* tranſact as a Broker too?

Mr. *Gandy.* Yes.

Dr. *Sayer.* We are not now upon the Point what he was really worth at that time, but what his Reputation and Character was, and therefore we deſire to know what that was, whether he was not looked upon as a ſubſtantial Man?

Mr. *Gandy.* He bore a good Character.

Mr. *Strange.* What was his Character, as to his Circumſtances at that time?

Mr. *Gandy.* His Character was then very good, and ſo continued till he was put in Priſon.

Mr. *Strange.* Where is he now?

Mr. *Gandy.* He is at *Rotterdam.*

Mr. *Scott* Sworn.

Mr. *Com. Serj.* I deſire that Mr. *Scott* may inform your Lordſhips whether he knew Mr. *Poulter*, and what his Character and Reputation was, as to Subſtance.

Mr. *Scott.* Mr. *Poulter* I had been acquainted with a great many Years, I looked upon him to be a very honeſt Man; and in the Year 1720 he tranſacted abundance of Buſineſs, and I did a great deal of Buſineſs for him, and ſome other Gentlemen at that time, as a Scrivener. In the Year 1720, upon the Fall of the Stocks, he came and told me he was ruined by it, and begged of me to aſſiſt him. He told me at firſt he had ſome Accompts depending with Mr. *Wilſon.*

Mr. *Serj. Pengelly,* I deſire he may repeat it, where he told him, and when?

Mr. *Scott.* About *December* 1720, before Mr. *Knight* went away, he ſaid he had large Accompts with Mr. *Wilſon*, and that he was utterly ruined, becauſe he ſaid he had transferred 6000 *l.* South-Sea Stock to Mr. *Knight*, which coſt him 40000 *l.* or better, and if he could not get it of Mr. *Knight*, he muſt be ruined. He told me I was acquainted with ſeveral Gentlemen of Mr. *Wilſon*'s Acquaintance, and deſired me to ſpeak to him or them about this Matter.

Sometime after Mr. *Wilſon*'s Agents, Mr *Aſhton*, I think, and one Mr. *Newton*, ſent to Mr. *Poulter*, and deſired a Meeting on the Behalf of Mr. *Wilſon.* I went on the Behalf of Mr. *Poulter*, and carried a Friend with me; we met at the *Crown Tavern* overagainſt St. *Clement*'s *Church*, and we told them how Mr. *Poulter* was ſerved; that Mr. *Knight* had ſo much Stock of his without any manner of Conſideration, as Mr. *Poulter* had told us; that Mr. *Poulter* was willing to do any thing they could expect. Some conſiderable time afterwards, I heard Mr. *Poulter* had been arreſted, and he deſired me, as being acquainted with Mr. *Wilſon*, to go to Mr. *Wilſon* and ſee if I could make up the Affair, he apprehended that his Bail would ſurrender him: Whereupon I went to Mr. *Wilſon*, and told him, that Mr. *Poulter* proteſted to me he was worth but 3500 *l.* or thereabouts, and that he would endeavour to get Friends to make it up 4000 *l.* if Mr. *Wilſon* would accept it. I was with Mr. *Wilſon* ſeveral times about this Matter, but he would not accept it.

Mr. *Serj. Pengelly.* Did he give any Reaſon why he would not accept it?

Mr. *Scott.* He ſaid he looked upon Mr. *Poulter* not to be an honeſt Man, and that he could pay more; I ſaid, he had better take that than keep him in Priſon.

Mr. *Com. Serj.* Notwithſtanding theſe private Intimations of his Diſability, I deſire to know what was his general Character as to his Circumſtances?

Mr. *Scott.* He was looked upon to be a very honeſt Man, and in good Circumſtances; he hath been truſted with Thouſands and Thouſands of Pounds.

Mr. *Serj. Pengelly,* I deſire he may be asked, Whether the Money, the 24000 *l. Wilſon* lent to him, was not lent for Stock-jobbing, for him to traffick with in the Alley?

Mr. *Scott.* I know nothing at all of that.

Mr. *Serj. Pengelly.* Whether he hath not declared ſo?

Mr. *Scott.* No, I know nothing of that; whenever I was in Company with Mr. *Wilſon* he was always very ſhy, and would not ſpeak freely.

Mr. *Plummer.* I deſire he may be asked, Whether in *June* or *May* 1720, he looked upon Mr. *Poulter* to be a good Man?

Mr. *Scott.* Mr. *Poulter*, in *April* or *May* 1721, told me his Circumſtances, and deſired me to go to Mr. *Wilſon* to meet thoſe Gentlemen, and to treat with them; but every body then, except four or five Perſons to whom he had made known his Circumſtances, reputed him an honeſt and a ſubſtantial Man

Mr. *Com. Serj.* I deſire he may inform your Lordſhips, in *May* 1721, what his general Character was, or what was generally thought by other People of him, without relation to his own particular Knowledge.

Mr. *Scott.* He was look'd upon as a Man of Subſtance, and a very honeſt Man.

Mr. *Sandys.* I deſire he would explain himſelf; Whether he was looked upon at that time by himſelf to be a ſufficient Man, and able to anſwer the Demand of Mr. *Wilſon?*

Mr. *Scott.* He had told me a Reaſon to induce me to have but an ill Opinion of his Ability, that he had transferred 6000 *l.* Stock to Mr. *Knight*, which coſt him 40000 *l.* and upwards.

Mr. *Serj. Pengelly.* Whether Mr. *Poulter* at that time went on dealing in the way of Buſineſs as he did before?

Mr. *Scott.* No, I believe he did not at that time: I believe in 1720 his Buſineſs was done, and he thought himſelf worth a great deal of Money.

Dr. *Sayer.* Whether in the Year 1720 he was not looked upon to have got a great deal of Money, and for that Reaſon to have quitted his Buſineſs?

Mr. *Scott.* It was then taken ſo; he was then looked upon as a Man of great Subſtance: There were not above five who knew his Circumſtances to be otherwiſe; he was generally looked upon then to be a Man of Subſtance.

Mr. *Lutwyche.* It is a very ſurpriſing way to eſtabliſh a Man's Reputation to ſay he was a Man of Subſtance when he offered a Compoſition, and at the ſame time he could not pay his Debts, he is underſtood to be a Man of Subſtance; I deſire to know, Whether it was after or before you had that Meeting, and offered the Compoſition?

Mr. *Scott.* I believe it was after.

Mr. *Lutwyche.* Did you take him to be a Man of Subſtance afterwards, after you had offered a Compoſition for him?

Earl of *Macclesfield.* This Gentleman hath anſwered two Things very conſiſtent, that he and three or four more, who knew Mr. *Poulter*'s Circumſtances, knew that he was not a Man of Subſtance then, but that all other People looked upon him to be a Man of Subſtance, and he tells you how he came to be ſo eſteemed.

Mr. *Scott.* Yes, ſo it was.

Mr. *Lutwyche.* I deſire to know again, whether after the Year 1720, he tranſacted Buſineſs as he uſed to do?

Mr. *Scott.* No.

Mr. *Lutwyche.* I deſire to know again, where he lived after the Year 1720, and what Means he had to live upon, beſides his Buſineſs?

Mr. *Scott.* He lived as a Gentleman at *Hackney*, had his Houſe well furniſhed and full of Plate, I have been at his Houſe ſeveral times.

Mr. *Lutwyche.* How long ago?

Mr. *Scott.* I believe a Year and a half, or two Years ago?

Dr. *Sayer.* I don't apprehend it is material what this Gentleman thought from the private Converſation he had with Mr. *Poulter.* The general Reputation is ſufficient for us to juſtify what was done; I deſire he may be asked, whether till that Converſation he himſelf did not look upon him to be a Man of Subſtance?

Mr. *Scott.* I looked upon him to be a Man of Subſtance, till he told me he was ſo unhappy that he could not get his Forty thouſand Pounds and upwards of Mr. *Knight.*

Mr. *Lutwyche.* When was it he told you ſo?

Mr. *Scott.* I believe ſome time in *December* 1720 that he told me ſo firſt.

Mr. *Lutwyche.* The Compoſition was in 1722.

Mr. *Serj. Pengelly.* I deſire he may be asked one general Queſtion, Whether after the Year 1721 Mr. *Poulter* retained any Character of Sufficiency or Ability?

Mr. *Scott.* He was looked upon by every one that did not know this Affair of Mr. *Knight*'s, to be a Man of Sufficiency in 1721.

Mr. *Lutwyche.* After 1721, Whether it was not generally known that Mr. *Poulter* was an inſufficient Man?

Mr. *Scott.* No, I believe not.

Earl of *Abingdon.* If they have done, I deſire to ask this Witneſs a Queſtion, Whether it was generally known that Mr. *Poulter* had tranſacted for Mr. *Knight?*

Mr. *Scott.* Not as I know of, I believe not.

Mr. *Serj. Probyn.* My Lords, we ſhall trouble your Lordſhips with no further Evidence on this Article. So if your Lordſhips pleaſe, we ſhall now proceed to the other Articles.

Mr. *Strange.* With your Lordſhips Permiſſion we will now go on to the next Set of Articles that were opened by the Managers for the Honourable Houſe of Commons, which are the fifteenth, ſixteenth and ſeventeenth Articles. And I ſhall now, as I did before, confine my ſelf to theſe particular Articles.

The Charge, my Lords, in theſe three Articles conſiſts of ſeveral Acts ſuppoſed to be done by, or by the Order of, the noble Earl within the Bar, and are laid to be all tending to the ſame Deſign of concealing the Deficiency of *Dormer*'s Office.

For which Purpoſe, my Lords, it is ſaid the Accompts of the Maſters were called for, not with any Deſign of examining the Accompts, but with an Intent to terrify the Maſters, and oblige them to contribute towards anſwering the Demands that ſhould be made upon that Office: And as an Inſtance of this Deſign, the Commons charge, That after a Contribution by nine of the Maſters, the Earl did not oblige them to bring in their Accompts.

That upon occaſion of another Sum of Money wanted to pay off a Suitor who had an Order for Money in *Dormer*'s Office, the noble Earl preſſed the Maſters to raiſe it amongſt themſelves; and, upon their Refuſal, cauſed his Secretary to pay it: And that notwithſtanding this Notice of *Dormer*'s Deficiency, an Order was afterwards made for Mr. *Edwards* to enquire, whether there was likely to be a Loſs of any Money depoſited with Mr. *Dormer.*

And as a farther Inſtance of this Endeavour to conceal the Deficiency, it is inſiſted on, that ſeveral Orders were made for the paying ſome Suitors the whole of their Demand, without regard to that juſt Proportion to which the other Suitors were entitled.

This, my Lords, is the State of the Complaint contained in theſe three Articles.

And as to the firſt part of the Complaint in calling for the Accompt, and terrifying the Maſters into a Contribution, I ſhall beg Leave to inſiſt upon two Facts; either of which, in my humble Apprehenſion, will be a ſufficient Defence againſt the Charge.

The firſt, my Lords, is, That the Contribution was voluntary: And the next is, That long after this Contribution the Accompts were continued to be called for, notwithſtanding it is charged to have been dropp'd immediately upon the Contribution.

To prove the Contribution voluntary, I beg Leave, my Lords, in the firſt place to look back upon Mr. *Lightboun*'s Evidence, where he acacquainted your Lordſhips, that upon his asking the noble Earl, who the Propoſal came from, the Earl's Anſwer was, That it came from ſome of the Maſters: And he concluded his Accompt of that Converſation with informing your Lordſhips, that upon his declining to contribute, the Earl left him to his Liberty.

But, my Lords, not to reſt it upon Mr. *Lightboun*'s Evidence only, we ſhall call Mr. *Cottingham*, who was acquainted with the whole Tranſaction, and will inform your Lordſhips, that the Contribution was altogether voluntary, and of their own Propoſal.

My Lords, the other Branch of the Article, and which indeed is the Jet of the whole, relates to the dropping the Deſign of looking into the Accompts upon the making of this Contribution, which we ſhall be able to falſify; and the Account, my Lord, we ſhall give of the whole Tranſaction is this:

In *February* 1720, Mr. *Cottingham*, by the Earl's Directions, wrote a Letter to the Maſters, requiring them to make up their Accompts, and preſent them to the Earl, according to a Plan which he imparted to them in that Letter.

Your Lordſhips are pleaſed to obſerve, that Mr. *Dormer*'s failure was at *Chriſtmas*, and this Letter in *February* following, before Mr. *Dormer* had any leave to come over, or any Diſcovery had been made of the Condition of his Office.

My Lords, The uſe which the Honourable Managers ſay was to be made of this Letter, was ſo little underſtood, that ſome of the Maſters did, purſuant thereto, make up and deliver in an Account, tho' not according to the Directions they had received; and the Affair of Mr. *Dormer* coming on, cauſed a Stop in making up theſe Accompts, till after the appointing a Succeſſor, and the making the Contribution, which, I think, is already fixed to have been in or about *Auguſt* 1721.

My Lords, The Summer being then far advanced, and every Body going out of Town, the Accompts were not exacted at that time; but upon their return to *London* a new Order was ſent by Mr. *Cottingham* in *November*, with freſh Directions for bringing in their Accompts.

My Lords, I muſt here beg leave to obſerve, That if the Contribution was all that was aimed at by calling for theſe Accompts, how comes it to paſs that Mr. *Lightboun*, who never contributed, was not called upon, in a particular manner, to bring in his Accompt, which, I did not obſerve, was proved, or ſo much as opened by the Learned Managers.

My Lords, The true Reaſon why theſe Accompts were not brought in, was the inſuperable Difficulties of ſuch an Undertaking; of which, I am perſuaded, no other Evidence need be given, than to reflect on the Proceedings that have been of late in taking theſe Accompts.

But, my Lords, a Learned Manager was pleaſed to ſay, Why did this Noble Earl keep the Office, if he was not able to do the Buſineſs of it? I hope your Lordſhips won't think the Noble Earl was idle all the while: Every body knows the great Variety of Buſineſs, and the continual hurry a Chancellor is in: The ordinary Buſineſs of the Court of Chancery is ſufficient to engage a Man of uncommon Application: What a Fatigue then, my Lords, muſt it be, when the neceſſary Attendance upon your Lordſhips, and at the Council Table, are both taken into the Account? Sure I am, my Lords, it can never be ſaid, that there was no want of Time or Leiſure for taking theſe Accompts.

My Lords, The next Branch of the Charge is the Order for 1000 *l.* to Mrs. *Chitty*, which is ſaid was paid by the Noble Earl's Direction, in order to conceal the Deficiency: But pray, my Lords, does not the Article and Evidence both deſtroy the Suppoſition? Could the Earl of *Macclesfield* intend to conceal the Deficiency, when he cautioned *Lockman* againſt marrying Mrs. *Chitty*, in proſpect of any more Money to be coming out of *Dormer*'s Office. "*That this would be the laſt* "*Payment* (I give your Lordſhips the very Words) "*ſhe was like to receive out of the Money paid into* "*the Hands of Mr.* Dormer, *for the Reſidue thereof* "*was in danger of being loſt, by reaſon of the De-*"*ficiency in the Effects of Mr.* Dormer." Is this, my Lords, a Concealment of the Deficiency? A Payment of 1000 *l.* of the Noble Earl's own Money, in order that the Suitor ſhould have no ſuſpicion of a Deficiency!

But to go further, my Lords, we ſhall ſhew, that the payment of this Money did not proceed from any ſuch low Motive, as, I may ſay, is uncharitably repreſented in this Article, but from a noble Mixture of Generoſity and Compaſſion.

Mr. *Lockman*, my Lords, repreſented himſelf as an undone Man if he had not the Money: He firſt inſinuated himſelf among the Noble Earl's Servants, as a Perſon under the utmoſt Diſtreſs; and the frequent Solicitations, which himſelf owns, are a ſtrong Evidence of that Diſtreſs: When he had gained Acceſs to the Earl, he told his Story in ſo moving a manner, not without Intimations of ſome deſperate Reſolution he might be forced to take if he had not the Money againſt the time, that, in pure Compaſſion to his Diſtreſs, the Noble Earl (whoſe Purſe was always open to the Unfortunate) was prevailed with to order him the Money. And we ſhall prove to your Lordſhips, that how little ſenſible ſoever he now is of ſo great a Favour, yet at that time he expreſs'd himſelf in Terms of one the moſt highly obliged; and I believe when our Witneſſes to this Tranſaction come to be examined, they will leave Mr. *Lockman* very little Credit with your Lordſhips, and will wipe away the moſt remote ſuſpicion of affecting any Concealment by this Tranſaction.

My Lords, The laſt Branch of this Article relates to a Declaration ſaid to be made by the Earl in the Cauſe of *Harper* and *Caſe*, and an Order made therein for Mr. *Edwards* to enquire if there was likely to be a Loſs of any Money depoſited with Mr. *Dormer*.

My Lords, The particular Occaſion and manner of that Declaration and Order have been fully ſtated by the Evidence we have already given of the ſeveral Judgments and Proceedings that have been againſt Mr. *Poulter* and the Marſhal, which I ſhall not trouble your Lordſhips with a repetition of, it being ſufficient for my Purpoſe in anſwering it as an Inſtance of Concealment to obſerve, that the whole Tranſaction was after the Accompts of the Maſters had been laid before the Committee of Council, when it was too late, and to no purpoſe to affect any Concealment.

My Lords, The laſt Branch of the Charge I am now upon, relates to the making Orders for paying to ſeveral Suitors their whole Demand, out of the Effects of Mr. *Dormer*, without regard to that juſt Proportion to which the other Suitors were intitled: And the Caſe of *Edisbury* was mentioned for this purpoſe; tho' I did not obſerve the Gentlemen enter'd into any Proof of what was done in that Caſe.

My Lords, In Proof of this Article ſeveral Orders were read: But I appeal to the Evidence of Mr. *Edwards*, whether it did not appear, upon his croſs Examination, that it was but in one Cauſe only where the whole Money was paid out; and whether that ſingle Inſtance is a ſufficient Proof of this Article, I muſt ſubmit to your Lordſhips.

But, my Lords, the true Anſwer is this: Both the Noble Earl and Mr. *Edwards* doubted not but that the Deficiency would be made good, and proceeded upon that Expectation; nor can a ſtronger Evidence be given (and I deſire it may be applied to ſome of the other Articles) that they were under this Perſuaſion, than Mr. *Edwards*'s making Payments without any Objection.

Eſpecially, my Lords, when it is conſider'd too, that Mr. *Lightboun*, who was ſo averſe at firſt to any Contribution, has, in that Letter which

has been read to your Lordships, mentioned several of his own Schemes for making good the Deficiency.

And if there was a Prospect of making good the Deficiency (as I humbly apprehend it is plain there was) it was very proper and natural to make the Orders in the manner they are now complain'd of. The nature of ordering Money out of Court makes it impossible the Suitors should call for it all at once, but the same is order'd out by Degrees: And Mr. *Cottingham*'s taking an Assignment of *Chitty*'s Order, shews plainly, that it was expected Effects would in time come in to discharge that, and all other Demands.

I would not, my Lords, be understood by any thing I have offer'd, as if I intended to dispute the Rule of Equity that has been laid down by the Managers, that where several Persons have Demands out of one Common Fund that cannot answer the whole, there ought to be an Average in such Case: But what I shall beg Leave to insist upon is, That that Rule only holds place where the Quantum of what is left to answer is fix'd and certain. In this Case the Effects were daily coming in, and therefore a Declaration of an Average where there was likely to be no Deficiency, would not, in my humble Apprehension, have been advisable or proper.

I beg leave, my Lords, to close my Observations upon all the Articles relating to the Concealment of *Dormer*'s Deficiency, with submitting it to your Lordships Judgment, if the whole Transaction does not speak it self to have been one continued Endeavour to secure to the Suitors their whole Demand, and to have been no more.

Mr. *Serj. Probyn.* My Lords, the Managers, when they entered upon these Articles, produced an Order made by the late Lord Chancellor, in the Year 1720, by which the Masters were obliged to bring in their Accounts, which as they charge to have been concerted with other Views, and for very different Ends than at first appear, we think it will be extreamly proper for us to begin our Defence to that Part of the Charge with a Witness who is ready to shew your Lordships the real Designs the Impeached Earl had in calling for these Accompts; and his Evidence, we humbly conceive, will satisfy your Lordships that it could be for no other Purpose than that the Earl might the better know the true State and Condition of their respective Offices, in Order to find out a proper Method of redressing such Grievances as were most apprehended at that Time. My Lords, it will appear by the Course of the same Witness's Evidence, that the other Order that was made upon them afterwards in *December* following, in as strong Terms as the former, could be for no other Reason or Purpose than that his Lordship hath assigned in his Answer, that he might understand the State of the several Offices, so as to be able to apply proper Remedies to the Danger which was then dreaded. All this will appear yet more fully from the Evidence of another Witness, who is to inform your Lordships of the particular Directions the Noble Earl gave about the Manner of bringing in these Accompts, with the Names of the Causes of the respective Solicitors concerned in them, and also what the several Sums first paid in were, the Time when so paid in, and also when the same or any Part were paid out again, together with many other Particulars which his Lordship thought necessary for his more exact Information. It will be likewise made appear to your Lordships, how the Masters were severally consulted with about this Matter, and that the Assistance of the Master of the Rolls was at length called in. But all the Masters agreeing, and particularly Mr. *Holford* (who had been in the Office for twelve Years) that it was next to impossible to bring in their Accompts, as first directed, in any reasonable Time; then it was, and not before, that the noble Earl condescended that they might bring them in a different Manner. Now, my Lords, as to the Suggestion that all this was only a Scheme, made use of to terrify the Masters into a Contribution towards *Dormer*'s Sufficiency, give me leave to say it is impossible to collect the least View of that Kind from the Evidence laid before your Lordships on that Head; for the Masters who did contribute on this Occasion, have all sworn that they paid in their Money voluntarily, and without being any ways influenced by his Lordship's Threats or Persuasions; so far from that, that Mr. *Lightboun* (the only Master who refus'd concurring in this Contribution) made no other Objection at first to it, than that the Proposal did not come from his Lordship, but from the other Masters; for in that Case he declared, That, if it had come from the noble Earl himself, he might have had more Regard to it, and would have taken it into his Consideration. So that we doubt not upon the whole, but it will plainly be made appear to your Lordships, that the constant Application which the noble Earl made from time to time to the Masters for this Purpose, proceeded from no other View, than that as soon as he might be truly informed of the State of their Offices, he should apply proper Remedies to whatever Abuses he should discover; and that as this was always his real Intention, so he would have put it effectually in Execution, had he not resigned the Great Seal so soon.

Mr. *Com. Serj.* My Lords, we shall call a Witness to shew, that after the 500 *l.* apiece was paid, the Accompts were called for, it cannnot then be pretended, that this calling for; the Accompts was to terrify the Masters to pay this 500 *l.* apiece.

The Time of the Payment of thse five hundred Pounds was in *August*, these Accompts were called for in the Beginning of *November*.

Mr. *Cottingham* called.

Mr. *Serj. Probyn.* I desire Mr. *Cottingham* would inform your Lordships whether any Directions were given to call in those Accompts about *November*, 1721.

Mr. *Cottingham.* I did in *November*, by the Direction of the Earl, write a Letter dated the 7th *Nov.* 1721.

L. Ch. Just. *King.* Have you any Draught of that Letter?

Mr. *Cottingham.* I have a Draught, the Committee required me to leave the Letter with them.

Mr. *Lutwyche.* My Lords, we will do the noble Earl all the Justice we can; here are the Letters.

Mr. *Cottingham.* The first Letter is dated *Feb.* 14. 1720.

Mr. *Lutwyche.* Who is it directed to?

Mr. *Cottingham.* The Letter is directed to each Maſter, and this is the Letter.

SIR,

I Am commanded by my Lord Chancellor to ſignify to you, that you do with all convenient Speed lay before his Lordſhip an Accompt in ſeveral Columns.

1. Of the Name of the Cauſe.
2. The Solicitor or Agent.
3. The Date of the Order.
4. For what Purpoſe the Money was brought in.
5. How much was brought in.
6. When.
7. How much in Hand.
8. How much on Security.
9. How much paid out.

A diſtinct Account of the Securities.

1. Cauſe.
2. From whom the Security is taken.
3. What the Security is.
4. In whoſe Name taken.
5. For how much each Security.
6. The total of the ſeveral Securities in the ſame Cauſe.
7. In whoſe Hands lodged.

A diſtinct Accompt of Money paid out.

1. Cauſe.
2. By what Order, and of what Date.
3. When paid.
4. To whom.

Your very humble Servant,

14 *Feb.* 1720. *P. Cottingham.*

SIR,

BY my Letter of the fourteenth of *February* laſt, I ſignify'd to you my Lord Chancellor's Pleaſure; which was, that you ſhould with all convenient Speed lay your Accompt before his Lordſhip; (the Method whereof was to be in ſeveral Columns ſubſcribed at the Foot of that Letter.) I am now further to acquaint you, that his Lordſhip is very much ſurprized to find, that in all this Time no ſuch Accompt hath been laid before him: And therefore hath commanded me to tell you, that it is expected to be delivered in, on or before the laſt Day of this Term. And if this is not comply'd with, you will oblige his Lordſhip (though very unwillingly) to think of other Meaſures; which I doubt not but you will avoid, by a ready Complyance with what is a ſecond time required of you. And to the End there may be no Miſtake as to the Method of your accompting, I here ſubſcribe it again at the Foot of this Letter; and am,

Sir,

Your very humble Servant,

7 *Nov.* 1721. *P. Cottingham.*

To the beſt of my Remembrance, this Letter was delivered to ten of the Maſters.

Mr. *Lutwyche.* Did you read it to them?

Mr. *Cottingham.* No: I am going to give you an Account. My Lords, according to a *Memorandum* I kept at that Time of this Letter, it was delivered to ten of the Maſters; to Mr. *Rogers*, Mr. *Hiccocks*, Mr. *Fellowes*, Mr. *Lightboun*, Mr. *Bennet*, Mr. *Holford*, Mr. *Borrett*, Mr. *Godfrey*, Mr. *Conway*, and Mr. *Lovibond.*

Mr. *Serj. Probyn.* We deſire that the ſecond Letter in *Nov.* 1721. may be read.

Mr. *Cottingham.* The ſecond Letter is dated 7 *Nov.* 1721. Sir, by my Letter of the fourteenth of *February* laſt, I ſignify'd, *&c.* N. 47.

Mr. *Serj Probyn.* By this it appears to be after the ſeveral 500 Pounds were paid in, the laſt 500 Pounds was paid in in *Auguſt* before, which ſhews that theſe Accompts were to be delivered in for no other Reaſon than that the Suitors ſhould have Satisfaction, as ſoon as a proper Remedy could be found.

Mr. *Common Serj.* I beg leave to make one Obſervation; here is ——

Mr. *Lutwyche.* If they have any more Queſtions to ask the Witneſſes, they may, the Obſerving is proper afterwards.

Dr. *Sayer.* I only beg leave to ask this one Queſtion, to be better informed. The Letter recites, it is written by the Command of my Lord Chancellor: I would ask whether my Lord Chancellor did give ſuch Directions?

Mr. *Cottingham.* Yes, my Lords, he did.

Mr. *Plummer.* If they have done with the Queſtion, I would ask Mr. *Cottingham* in the Words of his own Letter, whether the Earl of *Macclesfield* did oblige the Maſters to deliver in their Accompts in Purſuance of ſuch his ſaid Order?

Mr. *Cottingham.* Of the Letter of *November* 1721. I have kept no *Memorandum*; of the firſt ter I have.

Mr. *Plummer.* Whether that Letter of 1721. was delivered to the Maſters?

Mr. *Cottingham.* I believe it was.

Mr. *Plummer.* Then I [deſire to know if, the Maſters did deliver in their Accompts?

Mr. *Cottingham.* I don't remember they did.

Mr. *Plummer.* I deſire he may be asked, if after this time that the 500 *l.* was paid in Obedience to the firſt Letter, there was afterwards any other Demand made upon the Maſters for more Money?

Mr. *Cottingham.* I know of no Demand made upon them, except the 500 *l.* apiece.

Mr. *Plummer.* I deſire he may be ask'd if he doth not remember Mrs. *Chitty*'s Affair, and if that was not after 1721?

Mr. *Cottingham.* The Buſineſs of Mrs. *Chitty* was but in *July* laſt.

Mr. *Serj. Pengelly.* I deſire he may be asked, whether ſince no Accompt was called for after this laſt Letter, whether he did not underſtand the Reaſon to be, becauſe he apprehended the Maſters would make good Mr. *Dormer*'s Deficiency?

Dr. *Sayer.* My Lords, I ſubmit it, whether that Queſtion is material as to what his Apprehenſion was; your Lordſhips are Judges only upon Evidence of Fact, and not upon his Thoughts or Apprehenſions.

Mr. *Serj Pengelly.* Why were not the Accompts called for afterwards?

Mr. *Cottingham.* I really can't tell the Reaſon.

Mr. *Serj. Pengelly.* Whether he acquainted my Lord *Macclesfield* that the Maſters would make good the Deficiency?

Mr. *Cottingham.* I told your Lordſhips I did.

Mr. *Serj. Pengelly.* Therefore I desire he may be asked, Whether after that Time he received any Orders to send to the Masters to give in their Accounts?

Mr. *Cottingham.* I can't speak particularly as to the Times.

Mr. *Serj. Pengelly.* Whether those other Measures, intimated in his Letter to be taken, were not signify'd to him by my Lord *Macclesfield* to be, that the Cash should be taken out of their Hands?

Mr. *Cottingham.* My Lord called me into his Study, and directed me to write this Letter; all he said was, he was sorry that the Masters had not brought in their Accompts as he required, and that if they did not bring them in by the last Day of the Term, he said he would take other Measures: My Lord did not say to me what those other Measures were, whether it was to make an Order in Form, and then he should expect they would yield Obedience to it; all the Earl told me was no more than to write to the Masters, that he would take other Measures, what those other Measures were I do not know, but I apprehended it to be an Order his Lordship would make for obliging them to it.

Mr. *Snell.* I desire he may be asked, whether he did not himself apprehend by those other Measures, the taking the Money out of the Masters Hands?

E. of *Macclesfield.* My Lords, I submit it whether a Question of this kind is proper; he hath been asked what those Measures were; he hath told your Lordships that he knows not, but he has said what he apprehended they were; if now any Fact occur to him that may give Reason for apprehending otherwise, let him acquaint your Lordships with it.

Mr. *Cottingham.* Your Lordship said you would take other Measures; what I apprehended was, your Lordship would make an Order in form if they did not comply with that Letter.

Dr. *Sayer.* My Lords, I beg Leave to ask one Question: Whether the Masters, after this Letter was brought to them by Mr. *Cottingham*, did not represent to him the Difficulty of making up their Accompts?

Mr. *Cottingham.* There were several Particulars mentioned in the former Letter, there was the Causes to be named, *&c.* Some of the Masters told me they had not kept their Accompts so as to answer all the Particulars in the Letter; others said it would take up a great deal of Time; others that the Manner required was very difficult and tedious, and that it was almost impracticable, so many *Items* were contained in the Letter, that they seemed to say it could not be done.

Dr. *Sayer.* I desire he may be asked, whether he hath any Paper of the Method of Accompting required by the Committee, that his Majesty was pleased to direct to look into this Matter?

Mr. *Cottingham.* I have not a Copy of it here. There is an original Order, if the Masters please to produce it, I left it with Mr. *Lightboun.*

Mr. *Com. Serj.* If the Gentlemen have it, I hope they will produce it.

Mr. *Cottingham.* The original Order is of the third of *November* last, which I left signed by the Earl.

E. of *Macclesfield.* This will come more properly under another Article: The Gentlemen, the Masters, will take Care to look it out that it may be ready by that Time.

Mr. *Cottingham.* My Lords, I have now found it; I can't say it is a true Copy, dated the third of *November*, 1724. signed *Macclesfield*, C. *Let the several Masters*------- Am I to read it, my Lords?

Mr. *Lutwyche.* What, the Order of the third of *November* last?

Mr. *Com. Serj.* This Order cannot relate to this Matter. We are now upon the second Letter in 1721. The Letter is framed in so strong Terms, that it can't be supposed but the Earl was very much in Earnest, and it can't be insinuated as if intended to make the Masters comply in the Affair of Mrs. *Chitty* and *Lockman*, because that Transaction was but in *July* last.

E. of *Macclesfield.* I desire, my Lords, to go a little back again, upon recollecting, that the Question the honourable Manager was pleased to ask, about his giving me an Account that the Masters would make good the Deficiency, carries an Insinuation, as if this Method were dropp'd upon it: I desire he would inform your Lordships, whether he can be sure of the exact Time, whether this was before or after *November*, 1721.

Mr. *Cottingham.* I really can't be sure of the exact Time.

E. of *Macclesfield.* How near was it to Mr. *Dormer*'s going out, and Mr. *Edwards*'s coming into his Office?

Mr. *Cottingham.* Mr. *Edwards* came in in *May* 1721. It was near his coming in.

E. of *Macclesfield.* I desire to know whether you can recollect the Time you did tell me of it? Whether it was after *November* 1721. or before?

Mr. *Cottingham.* I several Times mentioned it to your Lordship before *November* 1721. and I believe several Times after, but that I cannot certainly tell, nor can I be particular to a Day.

E. of *Macclesfield.* Did you ever hear of it before the 500 *l.* a-piece was paid?

Mr. *Cottingham.* No, my Lords, it was after they had paid the 500 *l.* a-piece; but, my Lords, I don't know that they agreed to make good the Deficiency, I only told my Lord I thought they intended it.

Lord *Trevor.* He hath proved two Letters sent by the Direction of the noble Earl. As to the first Letter he kept a *Memorandum* as to the Time, but no *Memorandum* of the second. I would ask him as to the Time, when the Masters made that Representation of the Difficulty of giving in the Accounts, whether it was before or after the second Letter, or between the first and the second Letter?

Mr. *Cottingham.* To both the Letters they still made a Representation of the Difficulty.

Lord *Trevor.* Then I desire to ask one Question more, that is, Whether after the Representation made after the second Letter they owned that they had received the second Letter?

Mr. *Cottingham.* I verily believe that the second Letter was deliver'd to the Masters as the other was, but I have kept no *Memorandum* of it; I verily believe the Masters had it; I can't tell; I took it for granted they had it; I trusted one of my Clerks with it to take a *Memorandum*; I enquir'd after him; he hath been gone from me, and I can't find him out: I verily believe it.

I have no Reaſon to doubt but I gave it; the Maſters know that.

Mr. *Serj. Probyn.* If Mr. *Holford* is called, he will explain it; on his croſs Examination he admitted a ſecond Letter was ſent for him, and left in the publick Office: That appear'd in his croſs Examination.

Mr. *Strange.* It might not be improper, this Letter is before the honourable Managers, to enquire if they had it not from ſome of the Maſters.

Mr. *Cottingham.* No, they had it from me.

Mr. *Holford* called.

Mr. *Serj. Probyn.* I deſire he may be ask'd, whether he had not any Notice of the Letter in *November* 1721. whereby the Maſters were obliged to bring in their Accounts?

Mr. *Holford.* Indeed, my Lords, I do not remember that Letter.

Mr. *Serj. Probyn.* I deſire he may be asked, whether he remembers a ſecond Letter about Accompts?

Mr. *Holford.* Whether it was a Letter or a Meſſage I cannot tell; but between the firſt Accompt in *February* 1720. and the laſt in *November* laſt, I was called upon to Accompt, and had prepared it; but this ſecond Letter dated in *November* 1721. I do not remember any thing of it.

Mr. *Serj. Probyn.* How long was it after the Payment of the 500 *l.*

Mr. *Holford.* It was a good while after.

Mr. *Serj. Probyn.* That is all we contend for.

Mr. *Holford.* I believe not above a Year before the laſt.

Mr. *Serj. Pengelly.* I deſire he may be asked, whether after this Letter, ſuppoſed to be in *November* 1721. his Accompt was ever demanded of him?

Mr. *Holford.* I did deliver to my Lord an Accompt of *November* 1721. and I think a Year before *November* laſt, in purſuance of either a Letter or a Meſſage, I don't know which, my Lord required an Account; then I deliver'd an Account of Money, not of Securities in my Hands.

Mr. *Serj. Pengelly.* Whether that was an Account in purſuance to that Letter, demanding and requiring it of him?

Mr. *Holford.* Not as I know of, indeed.

Mr. *Lutwyche.* My Lords, as ſome mention hath been made of it, I think it may be proper to know what he can ſay to it, whether he ever promiſed to make good the Deficiency of Mr. *Dormer?*

Mr. *Holford.* I never did my Lords.

Mr. *Cottingham* called again.

Mr. *Serj. Probyn.* I deſire he may inform your Lordſhips what he knows in relation to the Payment of the 1000 *l.* to *Lockman*, and what Converſation he had with Mr. *Lockman?*

Mr. *Cottingham.* About the beginning of *July* laſt, to the beſt of my Remembrance, Mr. *Lockman* told me, that Mrs. *Chitty* had an Order upon Mr. *Edwards* the Maſter, to pay her 1000 *l.* That ſhe had been with the Maſter, but could not get the Money, and that he had ſpoke to my Lord *Macclesfield* about it, and the Earl had promiſed to ſpeak to the Maſter. —— And he deſired me to ſpeak to the Earl concerning it: I promiſed I would, and accordingly I did; he ſent me to the Maſter. When I came to him, I ſpoke to him of it; he ſaid he had no Money; I informed the Earl of it; the Earl ſaid he could not tell what to do. I informed Mr. *Lockman* of it; he ſeemed to be under the greateſt Concern, and ſaid, if he had not the 1000 *l.* he was undone; he was going to marry Mrs. *Chitty*, and Mrs. *Chitty* would not marry him, unleſs his Debts were paid, and ſhe had given him this 1000 *l.* to pay his Debts. He had compounded his Debts, and he repeated it over and over again, that if this 1000 *l.* was not paid, he was undone.

I have not ſeen a Gentleman in a greater Diſtreſs than he appeared to be; on which I told him, if he would pleaſe to have a little Patience I would conſider the Thing, and ſee what could be done. I did conſider it; and it came into my Mind that Mr. *Lightboun* had not paid his 500 *l.* I acquainted the Earl with it, and ſaid Mr. *Lightboun* had not paid his 500 *l.* and if he could prevail upon him to do it, I thought it would be eaſy to get 50 *l.* a-piece of the other Maſters, and that would do.

By the Earl's Order, I attended Mr. *Lightboun*, and told him that the Earl expected him to pay his 500 *l.* but I could not get a Penny from him; ſo he refuſing to pay the 500 *l.* that Propoſal of the 50 *l.* a-piece dropt: I acquainted the Earl of this, he ſaid he could not tell what to do. I acquainted Mr. *Lockman*, and told him I had done all that was in my Power to do; and that it was not to be done, unleſs he expected I ſhould pay it out of my own Pocket, which I was ſure he could not expect: When I told him that, he ſaid, I am undone, Mrs. *Chitty* will not marry me, his Royal Highneſs the Prince of *Wales* will not protect me, my Creditors will throw me into a Gaol, there I muſt rot and ſtarve. He made uſe of ſo many extravagant Expreſſions, and was under that Pain and Agony of Mind, that I apprehended he would do himſelf a Miſchief. I could ſay nothing to it, I had done all for an unfortunate Gentleman that poſſibly I could do. Two or three Hours after this, when I was at Dinner, he came to me again, and told me the Earl wanted to ſpeak with me immediately; he begged of me of all things in the World to go; on that I went to the Earl. The Earl was pleaſed to ſend for me into an inner Room, and ſaid, that he was teazed out of his Life by Mr. *Lockman*; I told him I was ſo too, I had no Reſt Night nor Day for him; I then repreſented to the Earl his own Story in Subſtance as he had told me. The Earl ſaid he was ſorry to find Mr. *Lockman* brought to that State and Paſs. I told the Earl I was afraid of the Conſequence, I did not know what a deſpairing Man might do, he ſeemed to be in the utmoſt Deſpair: Upon that the Earl ordered me to pay him the 1000 *l.* and ſaid, he would pay it me again. When I ſaw Mr. *Lockman*, I told him I had now received Orders to pay him; I had not the Money by me, but he ſhould have it in a little time, three or four Days would break no Squares; he ſaid, I am ſatisfy'd, provided it is paid. I ſaid I had it not by me, I muſt borrow it; I did ſo, and on the thirtieth of *July* I paid him the 1000 *l.* I think it was three or four Days after, he asked me what Reward he ſhould give me; I told him that his Diſtreſs was ſo great that he ſhould not give me

any Reward; I would not take a Penny of him, and I never had the Value of a Diſh of Coffee of him; I paid him the Money, I borrow'd it for that Purpoſe. Says I, Mr. *Lockman*, it appears to me that you are in great Diſtreſs, I will borrow the Money. I did borrow the Money, and paid Intereſt for it, meerly to ſupply the Gentleman.

Mr. *Serj. Probyn.* I deſire he may be asked if he knows of any other Sum of Money demanded by Mr. *Lockman* after this 1000 *l.* was thus agreed to be paid him?

Mr. *Cottingham.* After this Money was agreed to be paid, and, I think, the ſame Evening, I received this Letter from him, which any Gentleman that will may read. (*The Letter read.*) Sign'd *Lockman.* *Monday* Evening.

SIR, *Monday* Evening.

I Am very ſenſible of the Favour you have already done me, in promoting what my Lord in ſo affable a Manner was pleaſed to promiſe me, which Kindneſs I ſhall gratefully acknowledge all my Life: But as there is ſo great a Neceſſity, I hope you will pardon me the ſooner in being once more troubleſome, to beg of you to remind his Lordſhip of *letting Mrs.* Chitty *have the other* 574 *l. which my Lord was pleaſed to ſay we ſhould have*, and without which, Mrs. *Chitty*, who hath neither out of Chancery nor her Eſtate received any money this two Years, cannot ſpare me *the whole* 1000 *l.* As my whole Eaſe and Quiet depends on your kind Aſſiſtance, I muſt beg, Sir, once more to uſe your Intereſt to let us have it on *Thurſday* Afternoon, between Four and Five, when Mrs. *Chitty* intends to wait on you for the other. I ſhall be very proud on all Occaſions to ſhew with how much Gratitude and Eſteem I am,

SIR,

Your moſt oblig'd
humble Servant,
A. Lockman.

Dated *Monday* Evening, no other Date. My Lords, upon the Receipt of this Letter, the very ſame Evening I laid it before the Earl, I told him that it appeared by this he wanted 570 *l.* more. The Earl ſaid he was very much ſurpriſed at this Gentleman's ſending ſuch a Letter, he did not know what he meant by 570 *l.* more that he promiſed, and, in ſhort, told me he could advance no more.

Mr. *Strange.* I deſire he may be asked, whether he had any Diſcourſe with Mr. *Lockman*, relating to this 570 *l.* after this Letter?

Mr. *Cottingham.* I had a Diſcourſe with him ſome Time afterwards about the Letter.

Mr. *Serj. Probyn.* I deſire to ask him, whether after this Letter Mr. *Lockman* came to know what Anſwer he would give him?

Mr. *Cottingham.* Mr. *Lockman* came on the *Thurſday* following, being the thirtieth of *July*; Mrs. *Chitty* did not come: And then I told him that I had received his Letter, and had laid it before the Earl, and that the Earl underſtood not what he meant by it, that this was a growing upon him, and he would not pay a Penny more; I thought he had been very generous to him, and I told him I wonder'd what he meant.

Mr. *Serj. Probyn.* I beg Leave to take Notice, and your Lordſhips will pleaſe to recollect, that *Lockman* ſwore he never made any Demand of any Money beſides the 1000 *l.*

Mr. *Lutwyche.* That is to be obſerved when the Witneſs is examined throughout.

Mr. *Serj. Probyn.* I ask whether Mr. *Lockman* did petition my Lord Chancellour for this Sum of Money?

Mr. *Cottingham.* I don't remember Mr. *Lockman* petitioned. I believe not.

Mr. *Serj. Probyn.* Or Mrs. *Chitty?*

Mr. *Cottingham.* Yes, Mrs. *Chitty* did, before the Payment of this 1000 *l.* as I remember.

Mr. *Lutwyche.* Was there any Petition preferred before the Payment of the 1000 *l.* becauſe the Money was not paid according to the Order, which I think was dated *March* 17, 1723.

Mr. *Cottingham.* Yes: I told you ſo before.

Mr. *Lutwyche.* I deſire to know whether there was not a general Meeting of the Maſters before my Lord *Macclesfield* order'd him to pay the ſaid 1000 *l.* to Mr. *Lockman?*

Mr. *Cottingham.* Yes, there was.

Mr. *Lutwyche.* Whether it was not after the meeting of the Maſters, when it was propos'd to Mr. *Lightboun* to pay his 500 *l.* and the others 50 *l.* a-piece?

Mr. *Cottingham.* Yes, I believe it was.

Mr. *Plummer.* Mr. *Cottingham* hath given a long Evidence, he hath told you on the Application for this 1000 *l.* he recollected that Mr. *Lightboun* had not paid his 500 *l.* and if he could get him to pay his 500 *l.* and the other Maſters 50 *l.* a-piece, that would make up the 1000 *l.* The Queſtion I would ask is, if Mr. *Cottingham* had then any Orders from the Earl of *Macclesfield* to convene the Maſters?

Mr. *Cottingham*, No, I had then no Orders.

The firſt Order I had to convene the Maſters together, was on a *Monday*, before Payment of the 1000 *l.* as I remember: Mr. *Edwards* was then at my Lord's Houſe, and my Lord ordered me to ſpeak to him to convene the Maſtets, and they were convened, and came to my Lord's Houſe that Evening, as I was told, but that was after the Money was ordered to be paid.

Mr. *Lutwyche.* I deſire Mr *Cottingham* may look upon that, and tell us whether it is his Hand.

Mr. *Cottingham.* This is my Hand (*reads.*) His Lordſhip can do nothing in it at preſent.

Mr. *Lutwyche.* Do you remember any thing of this Petition being offered?

Mr. *Cottingham.* Yes, I do remember it; it is a Petition of Mrs. *Chitty* preferred to the Earl to be paid 1000 *l.* This Petition came to my Hands, the Earl ſaid, he could do nothing in it at preſent, and this Order writ upon it is my Hand.

Mr. *Lutwyche.* Whoſe Petition is it?

Mr. *Cottingham.* The humble Petition of the Defendant *Elizabeth Chitty*, Mrs. *Chitty*'s Petition.

Mr. *Lutwyche.* What is the Anſwer writ upon the Back.

Mr. *Cottingham.* His Lordſhip can do nothing in it at preſent.

Dr. *Sayer.* We apprehend it is of Conſequence to have this Meeting cleared. I deſire he may be asked, whether he knows of any meeting of the Maſters, and when, and what was done there?

Mr. *Cottingham.* Yes, there was a meeting that Evening, but I was not preſent.

E. of *Macclesfield*. By the Queſtions they have asked, they have taken it for granted as if he knew what was done at that meeting of the Maſters; I deſire to know whether he was preſent or not at that meeting of the Maſters?

Mr. *Cottingham*. I was not, I ſaid ſo before.

E. of *Macclesfield*. Then I think he ſays the Day of Payment of this Money was on the thirtieth of *July*.

Mr. *Cottingham*. Yes.

E. of *Macclesfield*. What Day was the Maſters called upon to meet?

Mr. *Cottingham*. I can't be poſitive, but I think it was the *Monday* before Payment of the 1000 *l*. This meeting of the Maſters was between the Order and the Payment of the Money.

Mr. *Plummer*. I believe there is a Miſtake in this Matter; I deſire to know of Mr. *Cottingham* whether Mr. *Edwards* was not by when he acquainted the Earl with this Demand, and propoſed to him the Method of paying it by Mr. *Lightboun*'s 500 *l*. and the other Maſters 50 *l*. a-piece.

Mr. *Cottingham*. No, no.

Mr. *Plummer*. I deſire it may be cleared then, and to ask him if Mr. *Edwards* was not by when he acquainted my Lord *Macclesfield* of the Demand of the 1000 *l*.

Mr. *Cottingham*. No, Mr. *Edwards* was not by. When this 1000 *l*. was directed to be paid, Mr. *Edwards* was in the Houſe, but the Earl did not ſee him; when I ſpoke to Mr. *Lightboun* for the 500 *l*. it was only between Mr. *Lightboun* and me, Mr. *Edwards* was in the Houſe when my Lord ſpoke to me, and ordered me to Mr. *Edwards* to convene the Maſters together.

Mr. *Serj. Pengelly*. I deſire he may be asked whether the 1000 *l*. was paid before he made the Propoſal to my Lord *Macclesfield*, that Mr. *Lightboun*'s 500 *l*. and the other Maſtres 50 *l*. would pay it?

Mr. *Cottingham*. The Money was paid afterwards, I have told you ſo before.

Mr. *Serj. Pengelly*. Before the 1000 *l*. was paid, whether did not you hear that the Maſters had refuſed to advance the further Sum of 50 *l*. a-piece?

Mr. *Cottingham*. Yes, I told you ſo before, that Mr. *Lightboun* would not pay his 500 *l*. ſo the other Maſters did not pay their 50 *l*. a-piece; this was ſome time before the Payment of the 1000 *l*.

Mr. *Elphinſtone* called.

Mr. *Strange*. My Lords, we deſire Mr. *Elphinſtone* to give your Lordſhips an Account of what he knows of the Application of Mr. *Lockman* for this 1000 *l*.

Mr. *Eplhinſtone*. My Lords, Mr. *Lockman* and I often had Converſation together before he received the 1000 *l*. upon the Account of Mrs. *Chitty*. He told me often that he had compounded his Debts with his Creditors, and if he could not receive the 1000 *l*. againſt a certain Day, on which he had engaged to pay it, he ſhould be ruin'd and undone; and ſome time after he told me, that his Creditors had been with much Difficulty brought to give him ſome few Days longer for Payment of the Compoſition, and that if he had it not then, he ſhould be ruin'd and undone for ever; ſwearing by the bleſſed Name of God, that that Diſappointment would be a Means of breaking off the March with the Lady.

Mr. *Serj. Probyn*. Go on.

Mr. *Elphinſtone*. I can't be poſitive as to the Day, whether it was the ſame Day that he received the 1000 *l*. or a Day or two before; but I then heard the noble Earl declare to him, that in Pity and Compaſſion to his Circumſtances, and the great Difficulty he then laboured under, he the ſaid Earl had given Directions to Mr. *Cottingham* to pay him the 1000 *l*. and about two Hours after, or ſomething more, Mr. *Lockman* came to me, and with abundance of Joy told me how much obliged he was to the noble Earl, for that he had relieved him in his Circumſtances, by giving Mr. *Cottingham* orders to pay him the 1000 *l*. He ſeemed to expreſs this with an uncommon Pleaſure, and did not at all doubt it would be agreeable to Perſons of the higheſt Diſtinction and Character to know it, and that he would make them acquainted with it. My Lords, I think it was on *Friday* laſt, in a Converſation with me and others here in the Painted Chamber, he declared he would rather have given two or three hundred Guineas or Pounds, than have been examined on this Occaſion; and ſaid, damn it, it hath happen'd, thro' a ſilly Word or two I dropt to the Solicitor on the other Side. I asked him what it was, he ſaid it was his telling him he had received the 1000 *l*. for Mrs. *Chitty*, by the noble Earl's Direction.

Mr. *Serj. Probyn*. After this Money was paid, whether he hath had any Diſcourſe with him, and whether it was owned by him that it was out of the Earl's own Poket?

Mr. *Elphinſtone*. Yes, many and many a Time, and with great Reſpect.

Mr. *Plummer*. I deſire the Council for the noble Lord may explain one thing: I think the Witneſs ſaid, Mr. *Lockman* ſaid he had rather give two or three hundred Pounds than have been examined. Whether the Witneſs doth apprehend by what Mr. *Lockman* ſaid, that he comes an unwilling Witneſs?

Mr. *Elphinſtone*. No, my Lords, I did not ſay that Mr. *Lockman* was an unwilling Witneſs, but that he told me and others, he had rather have given two or three hundred Guineas or Pounds, than have been examined on this Occaſion.

Mr. *Serj. Probyn*. We ſhall give your Lordſhips no further Evidence on this Article; we ſhall now proceed to the ſeventeenth Article, which charges the Earl of *Macclesfield*, that in Order to conceal the Deficiency in *Dormer*'s Office, and to prevent any publick Enquiry, he did from time to time, in Violation of the Truſt repoſed in him, make Orders on Mr. *Edwards* for Payment of the Money belonging to ſeveral particular Suitors, which had been lodged in the Hands of Mr. *Dormer*; in Obedience to which Orders ſeveral Sums were paid, without Regard to, or Conſideration of the Proportion which the reſt of the Suitors were entitled to, out of the Effects of the ſaid Mr. *Dormer*, whereby many of the ſaid Suitors loſt the Benefit of their proportionable Share, to which in Juſtice they were entitled.

The Crime ſuppoſed in this Charge is denied by the Earl in his Anſwer; he had no certain Knowledge what Mr. *Dormer*'s Eſtate would come out to be; but he was under a full Perſuaſion that Effects would come in in due Time, to make full Payment; and that the only Reaſon why they were not paid in an Average, was becauſe no Application was made by any of the Suitors for that Purpoſe.

Mr. *Com.*

Mr. *Com. Serj.* As to the ſeventeenth Article, your Lordſhips obſerve there was a full Perſuaſion both in the noble Earl and Mr. *Edwards*, that there would be ſufficient to pay every one; beſides I think he himſelf made not above one Order, not more than this one in the Caſe of *Chitty*; your Lordſhips will pleaſe to obſerve, from the Evidence of Mr. *Edwards*, that the noble Lord who made theſe Orders was firmly of an Opinion, from the Accompts he had received, that the Deficiency would be made up, ſo likewiſe Mr. *Edwards* was then under the ſame Perſuaſion: We ſhall reſt it here, that it was no manner of Fault, under theſe Apprehenſions, to make ſuch an Order as that was.

Mr. *Robins.* If your Lordſhips pleaſe, there is in the Cloſe of the ſixteenth Article a Declaration, ſuppoſed to be made by the Earl of *Macclesfield*, then ſitting in Court, I had the Honour to be in Court when the Declaration was made: As I had the Honour to be in Court; at that Time, I apprehend that what he ſaid was——

Mr. *Plummer.* If the Gentleman ſpeaks as Council, he ſtands in a proper Place, but if he comes as an Evidence, I beg he may come to the Bar and be ſworn; I humbly appeal to your Lordſhips if it is not proper.

Lords. Ay, Ay.

Dr. *Sayer.* If the Gentlemen think it proper to inſiſt upon it, the Gentleman is ready to be ſworn.

Mr. *Com. Serj.* The Gentleman's Character is ſo unexceptionable, that we hope the Learned Gentlemen will not put this Difficulty upon him of taking an Oath in a Cauſe, wherein he is Council.

Mr. *Plummer.* My Lords, I inſiſt upon it, becauſe then I ſhall have the Liberty of asking ſome Queſtions which I apprehend I have not now.

Mr. *Serj. Probyn.* My Lords, we ſubmit it upon the Evidence that hath been already given, he himſelf did declare then, when it came before him regularly, he would examine into it; and the firſt Opportunity this came before him in Judgment, he then put it into a Method, and accordingly referred it to a Maſter, and all proper Meaſures were taken.

Mr. *Com. Serj.* My Lords, we ſhall, with your Lordſhips Permiſſion, now proceed to lay before you what we have humbly to offer in Defence of the noble Earl as to the 18th Article. The Charge therein contained is in Effect, that tho' the Earl knew, that the Maſters of the Court might and did diſpoſe of, and traffick with the Effects of the Suitors; and tho' Propoſals were made for remedying of it, yet the Earl neglected to enquire into the Accompts of the Maſters, permitted, and encouraged them to employ, and traffick with the Effects of the Suitors, and took no Care that thoſe Effects ſhould be placed out, ſo as to prevent ſuch Practices of the Maſters, or that they ſhould give ſuch Security as was propoſed; and this is charged to be done with a corrupt View, and Intention of making an unlawful Gain by the Sale of thoſe Places, and to keep up the Price of them.

The Proof of theſe Matters depends intirely upon the Teſtimony of Mr. *Lightboun*, Mr. *Holford*, and Mr. *Kynaſton*, with the particular Repetition of whoſe Evidence, I ſhall not preſume to trouble your Lordſhips, after ſo much Time has been already ſpent, but ſhall beg Leave to obſerve upon the whole, that there is not the leaſt Evidence to ſupport that Part of the Article, whereby the Earl is charged with permitting and encouraging the Trafficking with the Suitors Effects. So far from it, my Lords, that the quite contrary appears from the Evidence which Mr. *Lightboun* has given upon this Article. He has inform'd your Lordſhips, that when a Propoſal was made, in order to the making good the Deficiency in *Dormer*'s Office (which the Earl had confeſſedly ſo much at Heart) that each Maſter ſhould out of the Suitors Effects in his Hands, place out a Sum of Money, the Intereſt whereof ſhould be applied for that Purpoſe; the Earl would not give the leaſt Countenance to that Practice, by coming into the Propoſal; but in plain Terms declared he neither could, nor would, give any Encouragement or Direction for the Diſpoſal of the Suitors Effects, for any other Purpoſe than their own Benefit.

My Lords, the Gentlemen of the Houſe of Commons are ſo ſenſible of the Defect of their Evidence as to this Point, that they ſeem not to rely upon it, but are forced to fly to Implication for Aſſiſtance; and your Lordſhips are told that this Part of the Charge is a Conſequence of the Earl's not having taken Care that the Suitors Effects were ſo placed out, as to put it out of the Power of the Maſters to make ſuch an Uſe of them; and that this Neglect amounts to a Permiſſion and Encouragement to the Maſters, to diſpoſe of and traffick with them as they have done.

My Lords, if this Part of the Article is to be conſidered as a diſtinct ſeparate Charge, it is ſo obvious, of how dangerous a Conſequence it would be to admit ſuch argumentative Evidence only as a Proof of it, that I apprehend I need not trouble your Lordſhips with ſaying any thing more to it; if it is to be looked upon as a Conſequence only of ſome other Part of the Charge, as a Miſchief ariſing from the Neglect of putting thoſe Effects of the Suitors out of the Power of the Maſters to make ſuch Uſe of them, I am ſomething at a Loſs to know why it is made a diſtinct ſelf-ſubſiſting Charge; it may perhaps by that Means ſwell the Bulk of the Article, but we humbly ſubmit it to your Lordſhips Conſideration, whether it at all increaſes the Weight of it.

My Lords, the Charge in this Article is not founded upon a bare Neglect of the Earl, upon an Omiſſion only, of doing what it is conceived he ought to have done, for the Prevention of this Misbehaviour of the Maſters; that perhaps was thought too ſlight a Ground for an Article of an Impeachment, eſpecially when the Neglect here complained of does not conſiſt in the not redreſſing any particular Grievance, pointed out by the Complaint of any of the Suitors of the Court, but in the not making general Orders for the Reformation of the Maſters. Perhaps, my Lords, it might be thought, that ſuch a Charge would have been ſufficiently anſwered, by alledging, as the Truth is, that the Maſters have only been continued by the Earl in the ſame Degree of Truſt and Power in which he found them, and with which they were inveſted long before he preſided in that Court: It may be too, my Lords, it might be conſider'd, how wide and dangerous a Field for Impeachments and other Proſecutions would have been opened, by making

it criminal in every one who had the Superintendency of an Office, barely to neglect, or omit, the introducing ſuch new general Orders and Regulations, as ſeemed to carry a Probability of preventing the Abuſes of the under Miniſters of ſuch Office; and therefore it is, my Lords, as it may be preſumed, that the Earl's Behaviour in this Reſpect is alledged to be fraudulent, and unjuſt, and with an Intention of making unlawful Gain to himſelf, by the Diſpoſal of thoſe Offices, and with a corrupt View and Intention to keep up the Price of them: So that it is not Remiſsneſs, or Negligence that the Earl ſtands here accuſed of, but Fraud and Corruption, and if this is not made out, we muſt humbly ſubmit it to your Lordſhips Judgment, whether or no this Article does not fall to the Ground?

But what Proof, what Evidence has been offer'd for that purpoſe? None, my Lords, that I remember; but your Lordſhips are left to collect it, by way of Argument, from the Earl's not having made uſe of proper Expedients to prevent this ill Practice; the Maſters, by that means, were more at Liberty to make a Profit out of their Offices, which for that Reaſon ſold at higher Prices, and therefore the Earl muſt be guilty of this Neglect with that View; a ſevere (tho' not a ſtrict) Conſequence indeed! Is the Proſpect of Gain, from hence, ſo certain, as to tempt ſo ſtrongly? And are there no other Reaſons apparent why the Earl ſhould defer his Regulations in this Matter? I need not put your Lordſhips in mind of the great Uncertainty of a Continuance in that high (but ſlippery) Station: And as the Profit ſuppoſed to be in View, depends upon the Death or Alienation of the Maſters, which ſometimes do not happen in a long Interval of Time, when this Uncertainty is added to the other, I appeal to your Lordſhips, whether it can be eaſily imagined, that any, even the moſt greedy Perſon, allowing him only to be in his Senſes, could be prevailed upon to hazard his Reputation and Quiet, upon ſuch diſtant, ſuch uncertain Hopes; eſpecially, my Lords, if the Neceſſity of ſo harſh a Concluſion be excluded, by its appearing that there were other Matters, which might probably enough be the Reaſon, or Occaſion of the Earl's not immediately entering upon theſe Regulations.

It appears, by what Mr. *Lightboun* has ſaid, that the Earl was very willing and deſirous of having theſe Matters regulated; and that when he firſt informed the Earl that he had ſomething to offer to his Conſideration in relation thereto, the Earl ſeemed very glad, and mightily pleaſed with the Propoſals, and gave him all due Encouragement.

It appears, my Lords, that after ſome time taken by Mr. *Lightboun*, to diſcourſe the Maſters upon this Head, he wrote a Letter to the Earl, containing ſeveral Propoſals for the regulating the Affairs of the Maſters; and your Lordſhips will obſerve the times and manner of the Earl's ſending for and preſſing the Maſters to bring in their Accompts, which, notwithſtanding the different turn that has been endeavour'd to be given to it, we humbly inſiſt upon it, appears to have been done, in order the better to enable the Earl to judge of and regulate theſe Matters.

As there were Propoſals for regulating the Conduct of the Maſters, in reſpect of the Suitors, ſo ſeveral Grievances, which the Maſters were ſuppoſed to labour under, and in which the Suitors too were ſuppoſed to be concerned, were repreſented to the Earl; and, amongſt others, that of Money being order'd to be paid into the Hands of the Uſher of the Court, inſtead of the Maſters; which was repreſented as a thing of ill Conſequence, and dangerous to the Suitors of the Court, as well as injurious to the Maſters. It appears likewiſe, that it was thought proper, if not neceſſary, to take all theſe Matters into Conſideration together, that the intended Regulation might be entire, and not by peace-meal; and Mr. *Lightboun* himſelf was of that Opinion, as well as Mr. *Holford*. And tho' it is alledged, that the Earl was credibly inform'd that the ſufficiency of ſome of the Maſters was much ſuſpected, and conſequently, that a more immediate regard ſhould have been had to what concerned the Effects in their Hands; yet when your Lordſhips conſider how that ſtands upon Mr. *Lightboun*'s Evidence; that it was only a general Intimation, without naming any particular Perſon, and that Mr. *Lightboun* declared he had no certain Ground for ſuch ſuſpicion; it will not, we hope, be thought a Fault not to ſingle out that Part of the intended Regulation; eſpecially when the ſame Witneſs informs your Lordſhips that it was as impracticable for the Maſters to have given an adequate, that is, a proper Security, as for the great Officers of the *Exchequer*, or the Treaſurers of the *South-Sea*, or other great Companies to do ſo. And your Lordſhips will be pleaſed to think it well deſerves Conſideration, whether it was in the Earl's Power to compel the Maſters to give even ſuch Security as they could; and if it ſhould be ſaid, that if they would not have complied, he might have order'd the Money out of their Hands; it will require time to conſider where, in ſuch Caſe, he muſt have placed thoſe Effects. It would have been as extraordinary to have required Security from the Maſters which came in afterwards, and ſo to have put them upon a Foot different from the others, when it was under Conſideration how to ſettle the whole. But, my Lords, the Event has ſhewn that there was not ſo much occaſion for ſo ſpeedy a Precaution in this Matter, for the Purpoſe for which it was then principally intended, which was the preventing the Maſters from embezzling the Securities of the Suitors in their Hands, ſince there is no occaſion of Complaint in that reſpect, they having been all deliver'd up, and the Deficiencies which have happen'd have been in the Caſh in their Hands, of which there was then ſo little apprehenſion or likelihood, that the preventing it was one of the things the leaſt under Conſideration. So ſhort ſighted and uncertain is human Prudence! So different the Judgments made of things in Proſpect only, from what they are in Experience! I make no Queſtion but your Lordſhips will have a due regard thereto, and make all equitable Allowances on that Account.

Your Lordſhips have been further inform'd, that, in order to ſettle theſe Matters, ſeveral Meetings were had, and, amongſt the reſt, one very ſolemn one, at which were preſent both the Earl and the Maſter of the Rolls. I need not trouble your Lordſhips with a Repetition of what paſs'd there, it is ſufficient to obſerve, that nothing being ſettled, the Earl, whoſe Mind was intent upon this Affair, propoſed ſome Expedients to facilitate Matters; particularly, that if the Maſters would quit their Pretenſions to a co-ordi-

nate Power of Judicature with the Maſter of the Rolls, that Matters might be made eaſy, in reſpect of the ordering the Payments of the Money: But this would not be complied with. And when it was found, by Experience, impracticable to bring any thing about, with the Agreement of the Parties, the Earl declared that he would take the whole Matter into his Conſideration; and ſince he could not have the Concurrence of others, he himſelf would regulate theſe Matters as ſoon as he could. Upon the whole of the Evidence offer'd upon this Article, more eſpecially from what Mr. *Lightboun* and Mr. *Holford* have ſaid, it plainly appears, that for a conſiderable time paſt, even from the latter end of the Year 1721, here has been an Intention of regulating the Offices of the Maſters of the Court of Chancery; that ſuch Intention has been purſued, and ſeveral Steps taken, and Endeavours uſed, to bring it to effect; and your Lordſhips, I hope, perceive the many Difficulties that have interpoſed, and will not be at a Loſs to find Reaſons for the Earl's not having actually made theſe Regulations, very different from the diſtant view of an unjuſt Gain.

My Lords, the Buſineſs of Reformation, however deſirable it may be, is, in all Inſtances, attended with Difficulties, and in the preſent Caſe, thoſe Difficulties have been increaſed by the different and jarring Intereſt of the Parties concerned; which, at leaſt, prevented their Concurrence in ſuch Reformation, and in a great meaſure deprived the Earl of the Benefit of the Advice of thoſe, who were the moſt able to inform him what was fit to be done.

Your Lordſhips are ſenſible how great a Portion of the Earl's time muſt neceſſarily be taken up in the diſpatch of the ordinary Buſineſs of that Court, and in his Attendance upon the publick Functions of his Office; and if, under theſe Circumſtances, he has not been able to bring his good Intentions to effect, and compleat them, before it was put out of his Power ſo to do, your Lordſhips, we hope, will think it more his Misfortune than his Fault, and that he is not to be reputed guilty of any Neglect or Omiſſion in that reſpect, which can be adjudged to be Criminal. We ſhall not trouble your Lordſhips with any Evidence upon this Article, but ſubmit it upon what has been already offer'd.

Mr. *Robins*. May it pleaſe you Lordſhips, The laſt Article which the Managers for the Honourable Houſe of Commons have been pleaſed to cloſe this ſolemn Proſecution withal, is the Nineteenth; wherein they have endeavour'd to repreſent the Earl, as deſigning to abuſe and impoſe upon his Moſt Sacred Majeſty, for the ſake of skreening and protecting the Maſters from a Parliamentry Enquiry, and to keep up the Price and Credit of their Offices.

But, my Lords, we humbly hope no Evidence appears to have been given that does in the leaſt ſupport or prove any ſuch Deſigns in the Earl.

'Tis true, indeed, that when his Majeſty was graciouſly pleaſed to order the Maſters Accompts to be laid before a Committee of the Lords of the Council, in order to inſpect the ſame, that the Earl, in Obedience to his Majeſty's Commands, thought he could not be too zealous in giving Orders for their preparing and getting the ſame ready, and therefore order'd them immediately to ſet about it.

And when ſome of them objected, that 'twas impoſſible to have them ready by the time expected, the 10th of *November* laſt, eſpecially Mr. *Holford*'s, which was to be an Accompt of twelve Years, that the Earl however order'd them to be got ready in the beſt manner they could, and told them, if it ſhould appear they wanted more time to make them perfect, that on Application it would, without doubt, be granted.

After which your Lordſhips have heard, that at a meeting of moſt of the Maſters at Mr. *Edwards*'s, when Mr. *Cottingham* came in, he propoſed to them, ſome ſay, three things, others two; but all of them agree in Subſtance, that 'twas to have their Accompts and Securities inſpected, and to produce the Ballance of Caſh in their Hands, if it ſhould be required.

And as to the inſpecting of their Accompts and Securities, your Lordſhips have been pleaſed to obſerve, that not one of them appear'd to make any Difficulty or Objection to it, but, on the contrary, readily conſented and agreed to it.

But as to the producing their Ballance of Caſh, they were ſomething ſtartled at that, as not knowing what was intended by it; and therefore asked Mr. *Cottingham* if they were only to produce or ſhew it, or if 'twas going to be taken away from them.

And though Mr. *Cottingham*'s Anſwer was, that they were only to produce it, as he underſtood, yet ſeveral of them appear'd to be very jealous that 'twas going to be taken out of their Hands; and Mr. *Edwards*, one of the Maſters, expreſſly ſaid ſo, and therefore adviſed them to get it ready as ſoon as they could.

But your Lordſhips have been pleaſed to obſerve, that whatever they underſtood by it, yet not one of them ſaid, or ſo much as inſinuated, to Mr. *Cottingham* that they were not able to anſwer or make good their Ballance of Caſh, only that ſome of them had it not all ready immediately; and Mr. *John Bennett* ſaid it could not be expected they ſhould keep it all by them, for fear of having their Throats cut, and that therefore they muſt have ſome reaſonable Time given them to raiſe it in; and Mr. *Conway* expreſſly ſwears that he apprehended they all ſaid they were able and ſufficient to produce their Caſh and Effects.

And, my Lords, it ſeems very natural and reaſonable to believe that they did ſay ſo, or at leaſt that Mr. *Cottingham* underſtood it ſo, becauſe when ſome of them ask'd whether they were to produce it in *Specie*, or whether Bank Notes or Goldſmith's Notes would not do as well, he made Anſwer, it certainly would do as well, and therefore adviſed thoſe that had not ſuch Notes ready by them to provide them, and to ſtand by and aſſiſt one another.

Now, my Lords, with great Submiſſion, all this ſeems to be a very natural, plain and artleſs Repreſentation of this Meeting: And when Mr. *Cottingham* had thus acquainted the Maſters what was expected from them, and had Aſſurances from them all, that they were ready and willing to comply with what had been propoſed,

Can there be any room to doubt but that the Noble Earl was very well pleaſed with this Account from Mr. *Cottingham*? And therefore when they met after, at the Earl's Houſe on the 10th of *November*, no wonder he did not particularly ask them the Queſtion, whether they were able and ſufficient to pay or make good the Ballance of their Caſh, for this Mr. *Cottingham* had before aſſured him

him they were, and therefore no need for the Earl to ask the Queſtion over again.

And Mr. *Lovibond*, one of the Maſters, ſwears expreſſly, not only that he himſelf was ready and willing to pay and produce his own Ballance, but that, from what paſſed at the Earl's Houſe, he believed or thought all the reſt of the Maſters were ſo too.

Now, my Lords, if this be ſo, if the Noble Earl was fully ſatisfied that all the Maſters were able to make good their Accompts, and he was juſt then going to lay a State of them before the Lords of the Council; is it at all to be wonder'd at, that his Lordſhip ſhould give them his Advice or Opinion what Form of Words or Subſcription he thought would be moſt proper to expreſs their meaning by?

And as he approved of the Form made uſe of by Mr. *Holford* on that Occaſion, was it or could it poſſibly be any Crime in the Earl to adviſe the reſt to ſubſcribe or under-write the ſame Form to their Accompts likewiſe?

And your Lordſhips have been pleaſed to obſerve, from the Evidence of all the Maſters, that not one of them made any Scruple or Difficulty of it, but went into another Room, as if they were really going to under-write the very ſame Subſcription to their Accompts.

'Tis true indeed, my Lords, ſome of them, when they were got by themſelves, were conſcious they could not come up fully to it, and therefore varied the Form, as beſt ſuited their own Circumſtances.

But your Lordſhips have been pleaſed likewiſe to obſerve, that the Noble Earl was ſo far from being in any Plot with the Maſters, to deceive his Majeſty or the Lords of the Council, that he took their Accompts, with the Subſcriptions they had under-wrote, without ſo much as ever looking to ſee if they were conformable to Mr. *Holford*'s Subſcription, and apprehended they really had been all the ſame, till upon reading them before the Lords of the Council, the variance between them appear'd.

But your Lordſhips have not heard of one Word of Reproof given them by the Earl afterwards, for not obſerving his Directions in making the Subſcription he deſired.

If the Earl had had any Deſigns of impoſing on his Majeſty or the Council, by getting the Maſters to under-write ſuch a particular Form of Subſcription to their Accompts, would he not have been more careful before he carried in thoſe Accompts to the Council Board, to have ſeen that they had exactly purſued his Orders, for fear of a Diſcovery?

Nay, my Lords, can it poſſibly be imagined but that when he came afterwards to find they had deceived him, and had not under-written the Subſcription, they pretended, and went out of the Room ſeemingly on purpoſe to comply with;

I ſay, my Lords, can it poſſibly be imagined, but that if the Earl had had any Views or Deſigns of his own in it, but that he would have ſeverely rebuked and reprimanded them afterwards for not obſerving his Directions.

But your Lordſhips have not heard one Word of Proof that the Earl complained, or ever ſaid any thing afterwards to the Maſters about it.

Now, my Lords, if this be ſo, can there poſſibly be a greater or ſtronger Concurrence of Circumſtances to ſhew that the Advice or Encouragement which the Earl afterwards gave the Maſters to aſſiſt and ſupply each other with Money and Effects, and repreſented to them that 'twould be for their Honour and Service to appear able and ſufficient; I ſay, my Lords, can any thing in the World be more unnatural, than to imagine, that by this the Earl meant to adviſe them to make a falſe ſhew and appearance?

They had before aſſured him, or given him the ſtrongeſt Reaſons poſſible to believe, that they could make a true ſhew and appearance. Why then ſhould he adviſe them to make a falſe ſhew and appearance? What End or Purpoſe in the World could this ſerve, either for themſelves or his Lordſhip?

This ſurely, my Lords, could never be the Earl's meaning; or if it was, whilſt he was under a Perſuaſion that they were all able and ſufficient to anſwer and make good the Ballance of their Accompts. If he meant to adviſe them to make a falſe ſhew and appearance, it muſt have been by adviſing them to conceal Part of their Caſh and Effects, for fear the World ſhould really take their Words, and be of Opinion that they were as able and ſufficient to make good their Accompts, as they had under their Hands acknowledged themſelves to be.

But, my Lords, as the Conſtruction the other way is not only moſt natural, but alſo conſiſtent and agreeable with all that had before paſs'd on that Occaſion, ſurely, my Lords, it muſt be a ſtrange wreſting and perverting of Words to underſtand them otherwiſe.

The Sum of this whole Article, my Lords, is this: The Maſters were on a ſudden call'd upon to bring in their Accompts of Caſh and Effects, and they did ſo, and declared, at the ſame time, that they were able and willing to make good the ſame on a reaſonable time given them for raiſing the Money; but being afterwards called upon for their Money ſooner than they expected, and applying to the Earl for his Advice and Directions what to do in it, he adviſes them to aſſiſt and ſupply one another with Money and Effects, till their own could be gotten in; tells them it would be for their Honour and Service to appear able and ſufficient, and that he would not have them let the World ſee, at a time when there had been ſo much Clamour and Noiſe about them, that they were not always ready, even at a Minute's Warning, to make good their Accompts.

This, my Lords, is the whole of this grievous Complaint againſt the Earl; and as it ſeems to be nothing but a Piece of good Advice in the Earl given to the Maſters for their own ſakes, in great Sincerity and Friendſhip, as the Earl expreſſes himſelf in his Anſwer, without any poſſibility of Advantage to the Earl himſelf, we humbly hope your Lordſhips will not think it worthy of a Place in this Impeachment.

Mr. *Com. Serj.* My Lords, we ſhall not give your Lordſhips much trouble on this Article, we ſhall only call Mr. *Holford*.

Mr. *Holford* not then appearing, Mr. *Cottingham* was called in again.

Mr. *Serj. Probyn.* My Lords, we deſire that Mr. *Cottingham* may inform your Lordſhips of the time the Maſters had the Letter which he refers to, and which he deliver'd, whereby the Accompts are directed to be brought in. We did

deſire Mr. *Holford* to bring it up with him: If Mr. *Holford* hath not the Letter, and it is not among the Maſters, we muſt examine Mr. *Cottingham* about it.

Lord *Ch. Juſt. King*. Mr. *Holford* is come.

Mr. *Serj. Probyn*. This is the Copy of a Letter, the Original of which Mr. *Holford* hath; if he hath it not here, I hope your Lordſhips will give leave to read the Copy.

My Lords, I deſire that Mr. *Holford* may give your Lordſhips an account of this Letter.

Mr. *Holford*. My Lords, I have it not; Mr. *Kynaſton* did inform me juſt now that he believed it might be in his Cuſtody, but he hath it not here.

Mr. *Serj. Probyn*. Your Lordſhips will give us leave to examine Mr. *Cottingham*.

Mr. *Cottingham*. My Lords, there was an Ordermade, dated the 3d of *November* laſt, of which myClerk made a Copy. I can't ſay I examined it myſelf: The Order is,

Let the ſeveral Maſters of the High Court of Chancery forthwith prepare and deliver to me a perfect Account of the MONEY in their Hands, therein diſtinguiſhing, in ſeveral Columns,

The Names of the Parties to the Cauſe.

The Dates of the Orders for bringing in —— —— } Money or Securities.

The Time of bringing in each Sum.

Particularly expreſſing the Sums transferred and paid to them at their coming into their Office in the firſt Place.

How the ſame hath been diſpoſed.

What Sums paid out, and to whom, —— —— } When and

What inveſted in Securities, } By what Order.

Specifying the Securities, by Dates, Numbers, *&c.*

Where the Securities are at preſent.

What Money remains in their Hands.

Where the ſame now is.

Nov. 3, 1724. MACCLESFIELD, C.

Mr. *Com. Serj*. My Lords, we beg leave to obſerve, that this Order is very much the ſame with the Directions given by the Noble Lord before to bring in their Accompts; but, upon the Nature of the thing, there ſeems to be a very good Reaſon why they did not comply punctually with it.

Mr. *Plummer*. Upon this Obſervation, my Lords, I beg leave to ask this Witneſs, Whether the Maſters have not given in ſome Account, notwithſtanding the Difficulty of the method?

Mr. *Cottingham*. Yes, my Lords, they have.

Earl of *Macclesfield*. Mr. *Holford* will inform your Lordſhips of this.

Mr. *Holford*. I believe this is a Copy of the Order given by my Lord *Macclesfield* for bringing in our Accompts in *November* laſt.

Mr. *Serj. Probyn*. I deſire he may be asked whether the Maſters were able to make up the Accompts purſuant to the Directions given in that Order.

Mr. *Holford*. I believe it was the next Day after this was ſent, that Mr. *Cottingham* did inform me of it; I had not ſeen it, I was then at *Weſtminſter*, ſitting in Court with my Lord *Macclesfield*; after the Court was up I went into the little Room behind the Court with my Lord, and I did ſay, I thought it would be very tedious to do exactly as this Order directed, becauſe it would require a tranſcribing of every Particular that each Maſter in the Court had ever paid and received for ſeveral Years, even where Cauſes were ended many Years ago, and that I thought it an impracticable thing. My Lord told me that muſt be no Objection to the bringing in of the Accompts; if we could not do as well as he wiſh'd, we ſhould do it as well as we could; and deſir'd them to be ready, that they might be brought in by the Time prefixed.

Mr. *Com. Serj*. I deſire he may be asked whether there were any Arguments uſed by my Lord to recommend Diſpatch in this Matter?

Mr. *Holford*. My Lord recommended it to me to be ſure to have the Accompt ready by the Time; I think he ſaid it was to be delivered in to the Council by ſuch a Day.

Mr. *Com. Serj*. I deſire he may inform your Lordſhips if nothing was ſaid about making an Excuſe a Pretence for delaying the Accompts.

Mr. *Holford*. My Lord did deſire that they might be prepared according to thoſe Directions, but ſaid this muſt be no Excuſe for not bringing in the Accompts as well as you can by the Time.

Mr. *Plummer*. When this Accompt was asked for, how long was it before it came in?

Mr. *Holford*. Three or four Days or a Week.

Mr. *Plummer*. And you gave them in compleat and right, fully and amply.

Mr. *Holford*. Yes, there were ſome little Miſtakes which were rectified afterwards, very ſmall ones.

Mr. *Common Serj*. By Reaſon of this Queſtion that hath been asked, give me Leave to trouble your Lordſhips with asking another, whether in the Accompt deliver'd in there was any thing more than the Ballance of the Accompt?

Mr. *Holford*. Yes, the Accompt I deliver'd in was an Accompt of every particular Cauſe, and of the Money and Securities in every Cauſe, and I did add the Solicitors Names in every Cauſe, as far as I knew; I believe all the others were not ſo.

Mr. *Com. Serj*. How were the others?

Mr. *Holford*. I believe the others were the ſame, only not the Solicitors Names.

M. *Com. Serj*. I don't mean that, but whether there was not the Ballance of each particular Accompt deliver'd in?

Mr. *Holford*. There was the Ballance of the particular Cauſes, and the whole ſummed up together.

Mr. *Serj. Probyn*. I deſire he may be asked, whether it was practicable to give in their Accompts in the Method directed within the Time preſcrib'd them?

Mr. *Holford*. It was not.

Mr. *Serj. Probyn*. I deſire he would inform your Lordſhips, whether they have not been call'd upon frequently to haſten their Accompts?

Mr. *Com. Serj*. I deſire he may be asked whether they have been ſince called upon by the honourable Committee of the Council, to bring in their Accompts according to the ſaid Method?

E. of Macclesfield. I deſire he may be asked, whether after this Accompt brought in, and the Ballance made upon every Cauſe, they have been ſince called upon to make up the Accompt according to the firſt Inſtructions or not?

Mr. *Holford.* We have not been required to purſue the former Inſtructions.

M. *Com. Serj.* If the Gentlemen of the Houſe of Commons have done as to this Article, we have done. My Lords, we ſhall now beg Leave to call ſome Witneſſes, to the eſtabliſhing the Reputation of Mr. *Cottingham*; when one ſide have endeavoured to leſſen his Credit, it will be neceſſary for the other Side to call Witneſſes to confirm his Credit. As to the Teſtimony he hath given, it is very material, as it ſtands in Oppoſition to the Evidence of others; tho' it be not directly contradicted, yet it is very different from ſome Accompts, which your Lordſhips have received from ſome of the Maſters, particularly from Mr. *Thomas Bennett:* And as for the Managers of the Houſe of Commons, notwithſtanding he was call'd a Witneſs by themſelves, tho' they have not ſaid in direct Terms that he is a Perſon not to be credited, yet calling him *a black Miniſter of Iniquity*, and uſing a great Number of ſuch like other Expreſſions, ſeem to carry ſome Inſinuation, as if Mr. *Cottingham* was not a Man of that Integrity as I believe all that know him will bear Teſtimony to. We beg Leave therefore to call a few of that Number as Witneſſes to his Character and Reputation, who have known him for ſeveral Years, and have had a full Opportunity of knowing his Character and Behaviour in the ſeveral Stations he has been in.

Mr. Goldesbrough called.

Mr. *Serj. Probyn.* My Lords, I deſire he may be asked how long he hath been acquainted with Mr. *Cottingham?*

Mr. *Goldesbrough.* I have been acquainted with Mr. *Cottingham* upwards of twenty Years.

Mr. *Serj. Probyn.* I deſire he would inform your Lordſhips, during his Acquaintance with him, what hath been his Character?

Mr. *Goldesbrough.* All the Time he was a Solicitor, I obſerved him to have a good Character; he behaved himſelf with all Integrity and Fidelity as ever I knew any body of his Profeſſion.

Mr. *Serj. Probyn.* You ſpeak as to his general Character.

Mr. *Goldesbrough.* I never heard he had any Blemiſh on his Reputation, he always maintain'd a very fair Character.

Mr. *Serj. Probyn.* During the Time he was Secretary to the Lord Chancellor, how did he behave himſelf?

Mr. *Goldesbrough.* He bore a very fair Character in the Place, as fair as ever any body did that went before him.

Mr. *Price* ſworn.

Mr. *Com. Serj.* We deſire he may give your Lordſhips an Account what he knows of the Character of Mr. *Cottingham*, and how long he hath known him?

Mr. *Price.* My Lords, I have known him upwards of twenty Years, I never knew any body ſay any thing amiſs of him, I always took him to be a very fair and honeſt Man, I know no Man in his Place behav'd himſelf better than he hath done.

Mr. *Com. Serj.* We deſire to ask not only to what Mr. *Price*'s Opinion is, but to what is the Opinion of others, as to his general Character?

Mr. *Price.* I believe, if you ask his Character of an hundred People, ninety of them will give him rather a greater Character.

Mr. *Com. Serj.* And as to the remaining ten, what Character doth he believe the remaining ten will give him?

Mr. *Price.* I believe that the remaining ten cannot juſtly charge him with any thing that is ill.

Mr. *Hickman* call'd and ſworn.

Mr. *Serj. Probyn.* I deſire Mr. *Hickman* may likewiſe give your Lordſhips an Accompt how long he hath known Mr. *Cottingham?*

John Hickman. I have known Mr. *Cottingham* thirty Years, I believe; he had always a very good Character, he was Clerk to me for two Years, he was a diligent faithful Clerk, and hath had a very good Character ever ſince, and I never heard any thing to the contrary.

Mr. *Blithman* ſworn.

Mr. *Serj. Probyn.* My Lords, We have a great Number to this Purpoſe; I deſire you would inform my Lords how long you have known Mr. *Cottingham*, and what his Character is?

Mr. *Blithman.* My Lords, I have known, and been intimately acquainted with Mr. *Cottingham*, for above twenty Years; while he was a Practiſer in the Court of *Chancery*, we were now and then concern'd one againſt another in Buſineſs, and I obſerv'd him to act with great Diligence for his Clients, and in a fair way of Practice in reſpect to his Adverſaries; he had the Character of the Practiſers of the Court of *Chancery* in general, for being a very honeſt and fair Man; after he was promoted to be Secretary to my Lord *Macclesfield*, every Practiſer of the Court that had any Buſineſs muſt have frequent Recourſe to him, and he was obſerv'd to diſcharge that Office with great Juſtice and Diſpatch to the Suitors, with great Civility to the Practiſers, and with a ſtrict Regard to the Honour of his Maſter and the Court; he was content with his juſt Fees, without ever demanding or expecting more on Pretence of Expedition, or upon any other Accompt: In general, I took him for a very honeſt Man, and he was always ſo reputed during the Time that I knew him.

Mr. *Serj. Probyn.* My Lords, we might apply to ſome of the learned Managers themſelves, were it proper upon this Occaſion, but we hope his Character is ſo clearly eſtabliſhed, by what Evidence has been already offer'd, that there is no Neceſſity for troubling your Lordſhips with any more on this Head: But we ſhall trouble your Lordſhips with one Piece of Evidence more, of a different Kind, which the noble Lord is with a great deal of Difficulty oblig'd to ſubmit to, and that relates to the private Conduct of himſelf, of which many enjoy the Benefits, and all were enjoyn'd and oblig'd to keep ſecret; but now it is become neceſſary to make known, ſince he hath been repreſented in Publick as a Perſon full of Corruption, that hath ſtudied nothing in the whole Conduct of his Life but the amaſſing great Riches to himſelf, in Oppreſſion of his Majeſty's Subjects; it is now become neceſſary, for the Vindication of his Lordſhip's Innocence, to ſhew that his Actions (which beſt ſpeak the Intention) have been of a different Nature; that as his Lordſhip hath received great Bounties from his Majeſty, ſo he hath been as liberal in ſharing them with thoſe

who have wanted his Relief. Multitudes of Inſtances might be given of this Kind, but we ſhall only lay ſome few before your Lordſhips, and then beg Leave to ſubmit to your Conſideration, whether it be poſſible to ſuppoſe, that a noble Lord, whoſe Heart was ſo charitably inclin'd to relieve the afflicted who apply'd to him, and to ſeek Opportunities of doing good to Strangers who were no ways known to him, could be guilty of Actions (ſuch as his have been repreſented by the Managers of the Houſe of Commons:) How can theſe things be reconcil'd, that a Man, truly religious, truly vertuous and charitable, ſhould be guilty of Oppreſſion, Injuſtice, Avarice and Corruption? We beg leave to lay ſome few Inſtances of this Nature before your Lordſhips, and then ſubmit their Weight to your Lordſhips great Judgment.

Mr. *Com. Serj.* I beg leave to obſerve that in a great many Articles, the Intention being what the Managers have much relied upon, we humbly apprehend we have clear'd the noble Lord from thoſe Intentions he is charg'd with, by what we have already offer'd to your Lordſhips; but if any Doubt ſhould ſtill remain, when it ſhall appear that he was a conſtant Benefactor to the Oppreſſed and Afflicted, that a conſtant Spirit of Benevolence hath reigned in the Breaſt of this noble Lord towards Mankind, you will think it impoſſible for a Man to be ſo contradictory to himſelf, that at the ſame Time as he was doing all the Good he could in Private, he ſhould be guilty of Avarice, Corruption and Oppreſſion in the moſt publick manner. Theſe Qualities are ſo inconſiſtent, that they could not reign in the ſame Breaſt at one and the ſame Time, for that Reaſon we ſhall beg leave to mention a few of the great many Inſtances we might produce on this Head, and firſt we deſire that Mr. *Oaker* may be called.

Mr. *Oaker* ſworn

Mr. *Serj. Probyn.* My Lords, I deſire that Mr. *Oaker* may give your Lordſhips an Accompt how long he hath been employ'd under the noble Earl within the Bar?

Mr. *Oaker.* I ſerv'd his Lordſhip all the Time that his Lordſhip had the Great Seal.

Mr. *Serj. Probyn.* I deſire he may give a general Accompt during all the Time that he ſerv'd his Lordſhip, how far he hath been privy to any charitable Actions he hath done?

Mr. *Oaker.* My Lords, I have the Names of ſome few in my Hand, I can only tell the Names and Sums of ſuch as accidentally came in my Way, for his Lordſhip always did thoſe Actions privately, and with his own Hands if it could conveniently be. When I firſt came to ſerve his Lordſhip, having heard his Lordſhip's Character of being very bountiful to almoſt every body that came in his Way, I therefore endeavour'd to inform my ſelf more particularly from ſuch Perſons as I apprehended apply'd to him for any Aſſiſtance of that Nature. The firſt that I remember was one Mr. *Brown*, who had been Author of ſeveral Practical Books in the Law; his Lordſhip was pleaſed for ſome Years before I acted under him, to pay for him 24 *s.* a Month for his Board and Subſiſtance, beſides Cloaths and Pocket-money; the Perſon that uſed to pay it being abſent in my time, I paid it for near ſeven Years, till *Chriſtmas* laſt, when he died.

Mr. *Serj. Probyn.* At the time he died, how old was he?

Mr. *Oaker.* He ſaid he was on *Bartholomew* Day laſt aged 102. As I have been inform'd, my Lord ſent a Surgeon and an Apothecary to attend him, and paid them, and the Expence of his Funeral; and the whole that came within my Knowledge was about 120 *l.* Afterwards there were two Clergymen recommended to his Lordſhip for a Living that was in his Diſpoſal, my Lord could not ſoon determine which to give it to; one of them was a poor Curate in *Surrey* at *Thames Ditton:* This poor Man complain'd, that he could not attend longer in Town, nor had Money to carry him home; my Lord gave him a Guinea, and told him he might go home, he need not ſtay, but ſhould be ſent to when he had determin'd what to do for him. A little while after, he came to Town again, and ſaid that it being reported, that his Lordſhip would give him a Living, he was turn'd out of his Curacy, and being an Inmate, was order'd by the Officers of the Pariſh to quit the Pariſh, but that he had not Money to remove his Family; and my Lord being told of that, ſent for him, and gave him a Sum of Money in a Paper; I asked the Clergyman what it was he gave him, and he ſaid *twenty Guineas*: He had ſoon after a Living given him by my Lord in *Kent*, and then as he was removing his Family to his Living, they were here in Town by the Way taken ill of the Meaſles; upon which the poor Gentleman wanting Money to proceed on his Journey, came again to my Lord, and his Lordſhip gave him twenty Guineas more, as he told me; and I believe his Lordſhip hath given him ſeveral Times ſince, but I don't know the Particulars, neither had I known any of thoſe I have mention'd, had not the poor Clergyman himſelf told me of them.

Mr. *Com. Serj.* What is his Name, and where is his Living?

Mr. *Oaker.* His Name was *Vigurs*, and his Living is near *Sittingbourne* in *Kent*. There was one Man, a converted *Jew*, I believe he is here himſelf, he hath had of my Lord ſeventy or eighty Pounds. There is one *Thwaites*, a Quaker, who hath attended the Houſes of Parliament long, and is very well known, hath had a pretty large Sum of Money, beſides other Aſſiſtance; ſixty Pounds I paid him at once by my Lord's Order. There is one Mr. *Wickam*, a Gentleman in the Navy, a half-pay Officer; he had out-run that, and was in the *Marſhalſea* Priſon, and could not make up his matters; a Friend of his was perſonally acquainted with me, and ſaid my Lord had ſome Knowledge of this Officer, and deſir'd me to acquaint him with his Caſe, which I did, and his Lordſhip ſaid he had no Acquaintance with him, but had known his Father, and for his ſake would clear him; and it being ſaid he was in for about thirty Pounds, his Lordſhip ſaid if it came to forty Guineas he would pay it, ſo that it ſet him out of Diſtreſs, and cleared him of all Debts; the Gentleman did make up his Affairs, and my Lord paid the Money, and beſides gave him a whole Suit of Cloaths, double Shoes and Stockings, and Wigs, and new Sword and Belt, fit to appear in the World again, which came to ſomething above forty Pounds in the whole. Another poor Clergyman my Lord gave a Living to, and he was very lame, and came to Town to go into the cold Bath; he happened to be arreſt-

ed for an old Demand of 36 *l.* His Wife came to my Lord, who gave her Money for preſent Subſiſtance, and order'd me to take Care that the whole Affair ſhould be made up, and the whole Debt was clear'd and diſcharg'd, and all the Coſts and Charges paid out of his Lordſhip's Pocket. There are abundance of other ſmall Sums I might mention of the ſame Kind, but it would be endleſs to trouble your Lordſhips with them. Then there is another matter which I mention to your Lordſhips, not ſo much for the Value as for the manner of doing it; a poor Gentleman reſiding at the *Bath* had a Place given him, as he ſaid, in *Ireland*, but had not Money to carry him over, and therefore only begg'd 40 *s.* to carry him over to *Ireland*; my Lord order'd me to remit him five Guineas which he receiv'd, but afterwards he wrote Word that he and his Family was ill at the Time, and therefore had expended the Money, and wanted the ſame Supply again; my Lord then order'd me to remit him ten Guineas more, which I did. Here is at your Lordſhips Bar one Mr. *Saunders*, a Clergyman, who hath ſundry Times received of his Lordſhip's Favours whilſt a Youth, and upon the Foundation in the *Charter-Houſe*; and when he went from thence to the Univerſity, his Lordſhip gave him forty Guineas, and afterwards when he was near going into Orders remitted him ſixty Pounds to clear all matters in the Univerſity, which I ſent to Dr. *Bentley* by his Lordſhip's Order. I don't mention ſeveral other Prrticulars, but they are very numerous, both what paſſed through my Hands, as well as others of his Lordſhip's Servants, hardly a Week paſſed without ſome Inſtance of this Kind.

Mr. *Com. Serj.* As you was under the Great Seal, you can inform my Lords, when Clergymen were admitted to their Livings, whether his Lordſhip has not frequently order'd their Fees to be remitted them?

Mr. *Oaker.* My Lord frequently gave Orders to remit the Fees of his own Officers, and at other Times his Lordſhip paid the Fees of the Patent Officers and Stamps out of his own Pocket; and hath given the Clergymen Money beſides, to pay their Journey to their Livings, and otherwiſe to ſuſtain them, and to buy Books.

Mr. *Com. Serj.* Do you remember Mr. *Higgs?*

Mr. *Oaker.* Mr. *Higgs* was greatly indebted, and in Priſon; his Lordſhip diſcharg'd him, and paid ſuch Debts as were inſiſted upon, to the Value of about ninety Pounds: He is there to give your Lordſhips a particular Account.

Dr. *Sayer.* As a great deal depends upon the manner of doing theſe things, I would ask him as to the manner in which they were done, whether in an oſtentatious manner, or how?

Mr. *Oaker.* My Lord did theſe generous Actions meerly as they fell in his Way, and without mentioning them, or letting them be ſeen or known, as far as I could ever perceive; ſo that where I did not apply to his Lordſhip my ſelf for ſuch People as came to me, I never knew it but by Accident; and in Caſes where I was privy, my Lord generally gave me more than was asked, his method being, as far as might be, to ſet Perſons entirely free, and to do them a full Service.

Mr. *Hunt*, a Clergyman, ſworn.

Mr. *Serj. Probyn.* My Lords, we deſire that Mr. *Hunt* would recollect and give your Lordſhips an Account of what charitable Acts he hath known done by the Earl of *Macclesfield?*

Mr. *Hunt.* I have known my Lord to be a very generous and noble Patron: I can ſpeak from ſeveral Inſtances, relating not only to my ſelf, but to ſeveral other Gentlemen of the Univerſity of *Oxford*. The firſt time I had the Honour of being known to his Lordſhip, was about *Whitſontide* 1722, upon the recommendation of one Mr. *Thornbury*, Vicar of *Thame* in *Oxfordſhire*. The Noble Lord asked Mr. *Thornbury* what Perſons he knew in the Univerſity that were inclinable to be ſtudious: Mr. *Thornbury* was ſo kind as to mention me as one: Upon which, his Lordſhip ſent for me to dine with him the Day after; I carried him ſome of the private Exerciſes that I had done in the Univerſity, which his Lordſhip read over, and was ſo kind as to approve. His Lordſhip kept me with him ſeveral Days, and deſired to have more Converſation with me, and he diſmiſs'd me with a generous Preſent of twenty Guineas, telling me he ſhould be glad to ſee me when he came to *Shirburn*, and that he deſign'd to make me a Preſent now and then till he could do ſomething elſe for me. About *Chriſtmas* after was the next time I waited on my Lord: I carried him again ſome of my Univerſity Exerciſes, which his Lordſhip peruſed, and was ſo favourable as not to miſlike them. His Lordſhip diſmiſs'd me at that time, with another generous Preſent of twenty Guineas, and further Aſſurances of future Favours. About this time I had received a Letter from Mr. *Gagnier*, Deputy Profeſſor of *Arabick* in the Univerſity of *Oxford*; wherein he complained to me, that he had been ill uſed by ſome Perſons in the Univerſity, for having writ a Poem in Praiſe of her Royal Highneſs. This I related to his Lordſhip: His Lordſhip expreſs'd a great deal of Concern for his Misfortune, pity'd his Caſe, and ſent him by me a Preſent of twenty Guineas. The third time I had the Honour to wait upon his Lordſhip was about *Michaelmas* 1723, when I received likewiſe a Preſent of twenty Guineas: I ſhould have alſo mention'd that I received other ſmaller Preſents from his Lordſhip, five Guineas at one time, and one Guinea at another. The laſt time I had the Honour of waiting on his Lordſhip and receiving his Bounty, was about *Eaſter* 1724, when his Lordſhip made me the uſual generous Preſent of twenty Guineas, and was ſo kind as to ſend by me thirty Guineas more, *viz.* fifteen to Mr. *Hutchinſon*, and fifteen to Mr. *Greenway*; ſo that within the ſpace of two Years I receiv'd of his Lordſhip's Bounty, for the uſe of my ſelf and the Gentlemen of my Acquaintance, one hundred and thirty ſix Guineas, upon no other Account, and for no Conſideration whatever, but to encourage us in our Studies, and ſupport us in the Univerſity.

Dr. *Sayer.* I would know whether the thirty Guineas were look'd upon as a ſingle Bounty, or was it to be an an annual Charity?

Mr. *Hunt.* I believe ſo, they told me they had received it as ſuch before; we all looked upon our ſeveral Benefactions as to be continued.

Mr. *Smithys*, a Clergyman, ſworn.

Mr. *Serj. Probyn.* I deſire he may give an Account of what he knows of my Lord *Macclesfield*'s Charities.

Mr. *Smithys.* My Lords, in the Year 1721 there became vacant the Place of a Maſter of an Hoſpital

Hoſpital in the Town of *Colcheſter*, in the Diſpoſal of my Lord Chancellor, to which Maſterſhip, King *James* the Firſt had annex'd the Cure of Souls of a Pariſh adjoining, and which Pariſh had no other Proviſion for a Miniſter.

The former Maſter had taken no Notice of the Pariſh, nor had any Care been taken Time out of Mind (as I have been informed by the Inhabitants of the Pariſh) of either burying their dead, or baptizing their Infants. My Lord Chancellor being (as I have been told) informed of this, ſent to me to know if I would accept of the Maſter's Place. I would not miſtake, my Lord's Chaplin ſent me word, if I would accept of the Place, and let him know my Chriſtian Name, his Lordſhip would ſend me the Grant of it. I did ſo, and then my Lord was pleaſed to enquire into the Nature of the Thing. I informed his Lordſhip that no Care was taken of the Pariſh at all, tho' I apprehended the Maſter of the Hoſpital ought to take Care of it. My Lord then was pleaſed to give me the Grant of the Hoſpital, and obliged me to a particular Care of the Pariſh; and at the ſame time deſired me to let him know what Condition the Church was in. I informed him that it was utterly unfit for divine Service; none had been performed in it (as I had been informed) Time out of Mind; and the Pariſhioners were in ſuch a Condition of Poverty, that they were not capable of making it fit for divine Worſhip.

My Lord then was pleaſed to order me to acquaint him how much would put the Church in Repair. Upon this I thought proper to apply to Workmen for their Advice; and by their Advice I informed his Lordſhip thirty Pounds would do it. My Lord ordered me to ſet the Workmen at work, and he would pay their Bills. Before the Church was finiſhed, through my Unskilfulneſs, and the Cunning of Workmen (as I then thought) this thirty Pounds would not do. I acquainted his Lordſhip with it, and he deſired to know how much more would do. The Workmen told me ten Pounds. My Lord ordered the Workmen to proceed, and they ſhould be paid the other ten Pounds; but by the Falling of a Wall, and other Accidents, this Money was not ſtill enough. I was aſhamed to betray my own Ignorance, in ſuffering my ſelf to be ſo impoſed upon by the Workmen (as I imagined his Lordſhip would think;) I determined to pay the reſt of the Money my ſelf; but being encouraged by Dr. *Sayer*, I did inform his Lordſhip of the Condition we were in. I then received an unlimited Commiſſion, to let the Workmen finiſh the Work, and ſend up their Bills when they had done, which they did, and my Lord immediately paid the Money, which amounted to *52l. 6s.* $11\frac{1}{2}$.

Dr. *Sayer*. I deſire he may be asked what ſort of Pariſh this is, and what kind of People the Inhabitants of it are?

Mr. *Smithys*. It is a poor Pariſh, but not numerous; there is not one in the Pariſh that is called Maſter; nor one, I believe, able to contribute a Shilling towards a Work of this kind, without hurting himſelf or his Family.

Dr. *Sayer*. I deſire he may be asked whether the Earl has any Relation to it, or any Eſtate thereabouts?

Mr. *Smithys*. He hath no Relation to the Town, nor Seat near it, nor any particular Concern, that I know of, for any Man belonging to it.

Mr. *Plummer*. If my Lord *Macclesfield* thinks it decent to give this Evidence, we do not think fit to oppoſe it.

Dr. *Sayer*. The Charities laid out by my Lord *Macclesfield*, have been to fit out Clergymen for Pariſhes, and to provide Churches for Pariſhes.

Mr. *John Meyer* ſworn.

Mr. *Serj. Probyn*. I deſire this Witneſs to inform your Lordſhips whether he was not formerly a Jew.

Mr. *Meyer*. I was a Jew formerly.

Mr. *Serj. Probyn*. I deſire he would give your Lordſhips an Account of his Converſion, and what Circumſtances of Life he was then in, and how he was relieved?

Mr. *Meyer*. I was, by ſeveral Misfortunes, and by the Hardſhip of my Relations, reduced to great Extremities, after I was converted from Judaiſm.

Mr. *Serj. Probyn*. After you were converted, what Charities have you received? Have you received any Collection made for you by any Perſon?

Mr. *Meyer*. I did apply my ſelf to my Lord *Macclesfield* for Charity, by the Recommendation of ſeveral worthy Clergymen: Upon which Recommendation, his Lordſhip was pleaſed to beſtow upon me a Charity of fifty Guineas. I was ſet up in a Way of Living in the Pariſh of St. *Katherines* near the *Tower*; then the Fire happen'd there, and I was burnt out, after which I had a dangerous Fit of Sickneſs.

His Lordſhip got an Account of the ſame, and ſent me a ſecond Relief of twenty Guineas. The ſame Time that his Lordſhip gave me fifty Guineas, he ſent twenty Guineas to the Reverend Mr. *Shute*, who was Treaſurer to the Society for propagating the Goſpel in Foreign Parts.

Mr. *Edward Sanders* ſworn.

Mr. *Serj. Probyn*. I deſire he may give an Account of what he hath received of my Lord *Macclesfield*'s Bounty?

Mr. *Sanders*. My Lords, in the Year 1713. the Duke of *Somerſet*, through the Interceſſion of the Earl of *Macclesfield*, put me into the Charter-Houſe, where I was educated eight Years and an half; all which Time his Lordſhip furniſhed me with Books; and at my leaving of the School, he gave me forty Guineas for the better proſecuting my Studies at *Cambridge*: In a Year and an half after this, he gave me ſixty Pounds. My Lords, this was not all; for when I acquainted his Lordſhip at my going into Orders, that I owed ſome Money at *Cambridge*, his Lordſhip was pleaſed to give me forty Guineas more, towards the diſcharging of my Debts.

Mr. *Thornbury* Clergyman ſworn.

Mr. *Serj. Probyn*. My Lords, I deſire he may inform your Lordſhips what he knows of his Lordſhip's Charity?

Mr. *Thornbury*. My Lords, what I have to inform your Lordſhips of is this; that in the Year 1721. about the latter End of *July*, ſome Application having been before made to my Lord Chancellor by my Father, I had the Honour to be ſent for by his Lordſhip to *London*. When I came to Town, as it was my only Buſineſs, ſo I made it my earlieſt Care to wait upon his Lordſhip, who was pleaſed to receive me with the greateſt Kindneſs

and Condeſcenſion, telling me he had ſome Livings at that time in his Diſpoſal, one of which he intended for me; his Lordſhip likewiſe offered, if I had a Mind to ſee the Livings, he would be at the Expence of my Journey, and that I ſhould have my Choice when I was come back; but I anſwered, I would refer that to his Lordſhip's Pleaſure. In a few Days after, he ordered his Secretary of the Preſentations to prepare a Preſentation of me to a Vicarage in *Somerſetſhire*, called *Ninehead*. When the Preſentation was ſealed, and I had received Inſtructions to go and wait upon his Lordſhip for it, he was graciouſly pleaſed not only to give me the Preſentation, but alſo diſcharged the whole Fees, and likewiſe made me a Preſent of 100 Guineas to buy me Books withal.

Mr. *Tho. Withers*, Mr. *Henſhaw* called, who not immediately appearing,

Mr. *Serj. Probyn*. My Lords, I am told here is a Reverend Prelate, who will willingly ſtand up in his Place, and give your Lordſhips an Account of what he knows of ſome of my Lord *Macclesfield*'s Charity.

The Lord Biſhop of *Oxford* ſtands up.

Mr. *Serj. Probyn*. I deſire your Lordſhip would give an Account of what you know of this Matter?

Biſhop of *Oxford*. My Lords, the Queſtion put to me is concerning my Lord *Macclesfield*'s Benefactions and Encouragement to Learning in the Univerſity of *Oxford*. I am a good Witneſs of it; for my Lord ſome time ſince deſired me to recommend a Number of young Men to him, whom I thought proper Objects of his Favour, and like to make a conſiderable Progreſs in Law, Phyſick, Divinity, or any other Branch of Learning. He ſaid he was willing to beſtow a conſiderable annual Stipend on them, for no other end but to enable them to buy Books, and encourage them to follow their Studies; and this without any Regard to Party, but merely for the promoting of Learning in the Univerſity. I recommended ſeveral Perſons to him, and enquired into the Characters of ſome who were recommended by others, and have no Reaſon to doubt but that every one that was thought deſerving had a conſiderable Allowance. I can't charge my Memory with particular Sums, but believe his Lordſhip ſaid he was willing in the whole, to expend this Way four or five hundred Pounds every Year. This is the Sum of what I know; if your Lordſhips deſire to be informed of any thing more particularly, I am ready to give an Anſwer to the beſt of my Knowledge.

Mr. *Com. Serj.* My Lords, we have now gone through our Evidence, and I ſhall beg your Lordſhips Indulgence for the making ſome ſhort Obſervations upon what has been offered in Defence of the noble Earl, now at your Lordſhips Bar; and as this Proceeding has already been drawn out to a very great Length, I am ſenſible it will become me, to uſe as much Brevity as may be. I ſhall, however, before I proceed, beg leave to treſpaſs upon your Lordſhips Patience ſo far as to ſay, that if in the Courſe of this Proceeding, any thing ſhould have ſlipped from us who are of Council for the Earl, which might not be ſo exactly ſuitable to the very great Reſpect and Deference, which is due from every one to this auguſt Aſſembly, I hope your Lordſhips will, in your great Goodneſs, impute it only to the Inadvertency, which the Variety of Incidents and Hurry attending Proceedings of this Nature, may reaſonably be ſuppoſed to occaſion, and as ſuch excuſe it.

We hope, my Lords, that what has been humbly offered to your Conſideration, in behalf of this noble Earl, has made him appear a Perſon very different from what he has been repreſented to be, by the Gentlemen of the Houſe of Commons; and I am apt to perſuade my ſelf, that if they had been as well informed before hand, of what he had to ſay in his Vindication, as they were of what they had to object to his Conduct, your Lordſhips would have been ſpared the great Trouble occaſioned by this long Proſecution.

It is, my Lords, the peculiar Happineſs of our Conſtitution, to have in the different Parts of it, all the Requiſites neceſſary and proper for the Preſervation of the Peace and Welfare of thoſe who have the good Fortune to live under it. In thoſe, whoſe Part it is, like Centinels, to watch for and guard the Liberties and Safety of the People; who are the grand Inquiſitors, to ſearch into, and expoſe every Thing that has even the Appearance of being hurtful or dangerous to the Liberties or Properties of thoſe they repreſent; Vigour, Warmth, Zeal, I had almoſt ſaid ſome Degree of Paſſion, ſeem proper Qualifications; whilſt Calmneſs, Moderation, and Patience, not altogether without Tenderneſs and Mercy, are the proper Characteriſticks of thoſe, who by the Conſtitution are to determine and judge. And, my Lords, I may venture to ſay, that, to the Glory of our Nation, all theſe Qualities have been exerciſed, and every Part of our Conſtitution hath exerted itſelf, upon Occaſion of this Proceeding: His Majeſty's great Condeſcenſion, in readily laying this Matter before his Parliament; the Zeal and Vigour of the Houſe of Commons, in examining into it; the great Abilities and Induſtry which the learned Gentlemen, who have had the Honour of Managing this Proſecution, have ſhewn, (they'll pardon me, I hope, for ſaying, I could have wiſhed it had been attended with ſomething leſs Harſhneſs and Severity;) and your Lordſhips great Goodneſs and Patience, hitherto ſo conſpicuous, and of the Continuance of which there is not the leaſt Reaſon to doubt, are ſo many illuſtrious Proofs of it.

Give me Leave, my Lords, to proceed further, and mention the Part which the noble Earl at the Bar hath had in this Affair, his Readineſs, when after his Endeavours for that Purpoſe, he found the thorough Reformation of the Court of Chancery a Work too difficult for him ſingly to effect, in laying the Affair before his Majeſty in Council; the ſeaſonable and proper Orders he afterwards iſſued out upon that Occaſion; and his Zeal in preſſing to have them immediately comply'd with; leave him ſtill, we hope, ſome Share of the Reputation and Merit of what has been, or is likely to be done towards the Reformation of that Court. Nor will your Lordſhips be at a Loſs, to what Cauſe to aſcribe this Behaviour of the Earl, notwithſtanding the Repreſentations which have been made of him; when you ſhall conſider the ſteddy Affection and Zeal for our Conſtitution, which on all Occaſions

have ſo remarkably appeared in him. Your Lordſhips, no doubt, remember thoſe Times and Conjunctures, which it was thought required not only good Wiſhes and Affection, but Vigour likewiſe and Courage, to ſupport and preſerve to us the Continuance of our Conſtitution. Then it was, and for that End, that this noble Lord ſo eminently exerted all thoſe great Abilities he was Maſter of; and that with ſuch Succeſs, as gained him the Approbation of his Majeſty, who thought his Services ſo ſignal, as to juſtifie his Munificence towards him, and his Goodneſs in raiſing him to ſo great Honour. And can it eaſily be thought, my Lords, that one ſo qualify'd, ſo affectioned, ſo diſtinguiſhed, ſhould enter into a wild Deſign of Deceiving both King and Parliament? Or that he ſhould enter into it, and carry it on in ſo poor and indiſcreet a Manner, as is ſuggeſted in the Charge againſt him? in a Manner ſo void of Thought and Contrivance, that it reliſhes more of Madneſs than any thing elſe. Suppoſe he could be thought capable of attempting to conceal Matters that were ſo notorious to every body, and that by a Means, which from the very Nature of it, muſt in ſome ſhort Time have betrayed the Contrivance; yet ſurely, my Lords, his Fears and Apprehenſions would have reſtrained him from communicating himſelf in a Matter of ſo high Concern, without Diſtinction, to ſo many Perſons as were then ſuppoſed to be preſent; that he ſhould publickly give ſuch Orders as would certainly expoſe him to the Reſentment of his Majeſty, and both Houſes of Parliament, in Hopes that ſuch a Secret would be kept by ſo many People as are ſuppoſed to be concerned in it; ſurely, my Lords, is a Charge of ſo extraordinary a Nature, as will require better Proof than what ariſes from uncertain Expreſſions, in Diſcourſe with a Number of People at the ſame Time, and they in ſo great a Hurry and Confuſion, that there was very great Room for Miſapprehenſions, and where it was eaſy for one to miſtake what was ſaid to another, as if ſpoke to himſelf: And from hence it proceeded, as I preſume, that the Account given of that Tranſaction, by the Gentlemen concerned in it, is ſo various and uncertain, that we humbly hope your Lordſhips will not think it reaſonable to be rely'd on, as a Proof of ſuch a Charge.

My Lords, the Foundation of this whole Complaint againſt the Earl is his Acceptance of Preſents or Gratuities, upon the Diſpoſal of Places; or as the Gentlemen of the Houſe of Commons are pleaſed to ſtyle it, the Selling of Places, principally thoſe of the Maſters of the Court of Chancery. We have admitted the Facts, but without admitting thoſe Circumſtances which accompany it, as it ſtands charged in the ſeveral Articles for that Purpoſe; and we hope we have ſatisfy'd your Lordſhips, that it was no Ways illegal to act as the Earl hath done upon thoſe Occaſions. To ſupport our Reaſoning upon that Head, we propoſed to ſhew to your Lordſhips, what the Senſe and Opinion of diverſe great and learned Men had been in reſpect to the Law in that Point, from their own Practice and Behaviour: And we hope that the Evidence which hath been offered for that Purpoſe, hath plainly made it out, that the Earl hath the conſtant Uſage of his Predeceſſors in that Office, as well as of other great Perſons in other Stations, to countenance what he hath done upon ſuch Occaſions, and that without any Marks of Parliamentary Reſentment. If this noble Lord ſtood in need of an Excuſe for having taken Preſents, how effectual would this be for that Purpoſe? For ſure, my Lords, if it were allowed that he had erred in this Matter, yet after ſuch great Examples, your Lordſhips would think it an Error only, and not an Offence which deſerved a heavy Cenſure.

The reſt of the Articles have ſo near a Relation to the Charge of taking of Money, being only Aggravations of that Matter, under the ſeveral Circumſtances therein contained, that I humbly apprehend, they do in a great Meaſure depend upon, and will ſtand or fall together with it. And as the Evidence which has been given in relation to them, and the Obſervations made thereon, have been ſo full, and are yet ſo freſh in your Lordſhips Memories, I will avoid troubling your Lordſhips with a needleſs Repetition of any thing upon thoſe Heads.

My Lords, the Source of all the Evils here complained of in the Earl, is ſuppoſed to be Avarice: Every Thing is aſcribed to an immoderate Thirſt after Gain, an irregular Deſire of amaſſing Wealth. And great Endeavours have been uſed to perſuade your Lordſhips, that the Earl was ſo wholly tainted, ſo thoroughly poſſeſſed with this Vice, that he had nothing in View but to gratify it; and every ſingle Action of his had a Tendency that Way. But ſure, my Lords, the Evidence juſt now laid before your Lordſhips, ſhews a Spirit and Temper of Mind far different from that, and totally inconſiſtent with it. And none, I hope, will object againſt our having entred into a Proof of that Nature; there are ſome Occaſions, and ſurely this is one, that will juſtify the moſt modeſt Man in publiſhing his own good Deeds; and upon which even charitable Acts, as firſt intended, as they ought to be bury'd in Silence and known to none but the great Rewarder of them, may be withdrawn from their Privacy, and diſcloſed to publick View.

My Lords, the Inſtances which we have produced are not of pompous Charities; we ſhould then, no doubt, have been told that Vanity and Oſtentation had the greateſt Share in them: Had they been a few Inſtances only which were laid before your Lordſhips, though far exceeding in Value thoſe which have now appeared; it would perhaps have been ſaid, that thoſe were Starts and Fits of Charity: But your Lordſhips will obſerve that theſe have flowed in a continual Stream, and can be owing to nothing but a conſtant habitual Benevolence towards Mankind, a regular and continual Inclination to do Good. And can ſuch a Temper and Diſpoſition of Mind be conſiſtent with inſatiable Avarice, baſe Corruption, and mercileſs Cruelty, in ſpoiling and oppreſſing Widows, Orphans, and Lunaticks, and ſuch too, who were under his Guardianſhip and Protection?

My Lords, we hope it will be thought impoſſible for ſuch oppoſite Sentiments to reign in the ſame Breaſt, at the ſame Time; and that at leaſt, where any thing may appear doubtful in the Earl's Words or Actions, not only the received Notion of our Law, of preſuming always in Favour of Innocence, but this Benignity of Temper in the Earl will determine your Lordſhips to conſi-

der it in the moſt favourable Light, and never to intend any thing harſh, which will admit of a milder Conſtruction.

The Cries and Tears of Widows and Orphans have been artfully introduced, to raiſe your Lordſhips Compaſſion and Indignation upon this Occaſion. It is no Wonder, my Lords, that Women and Children ſhould be frighten'd at the firſt Appearance of the Deficiency in the Suitors Effects, which was repreſented in ſo terrrible a View; but we hope, my Lords, the Terror is ſunk with the Deficiencies, and that in a great Meaſure theſe Cries are huſhed, and Tears dry'd up, now it already appears (as we hope it evidently does) that no very conſiderable Loſs is likely to happen to the Suitors, and that the Proſpect of its being leſſened ſtill improves.

Under theſe Circumſtances ſhould your Lordſhips think (which we humbly hope there is no Ground to ſuppoſe) that the Earl has fallen into any Miſtakes; yet when his Majeſty, your Lordſhips, and the Commons, have extended their Clemency to thoſe Maſters, who have been the acknowledged, the immediate Inſtruments and Actors of the Evils complained of, and of whatever may be prejudicial to the Suitors; and the Legiſlature hath interpoſed, to preſerve them in the Enjoyment of their Offices; we hope the Earl would not be the only Object, on which your Lordſhips Goodneſs did not ſhine. We rather hope your Lordſhips will conſider his Misfortunes; and when you look upon the high Eminency from whence he is fallen, and view him at your Lordſhip's Bar, ſcourged with the ſevereſt Stripes the Tongue can inflict (and what can be more cutting?) a Puniſhment, from which he had ſome Reaſon to expect that his Relation to your illuſtrious Body might have protected him: That theſe Circumſtances will raiſe thoſe generous Sentiments of Tenderneſs, which always dwell in noble Breaſts: A Tenderneſs, no ways inconſiſtent with your Lordſhips Juſtice, to which the Earl chearfully ſubmits himſelf; and that in Imitation of the unerring Judge of all, whoſe Vicegerents you are on this Occaſion, your Lordſhips will in Judgment remember Mercy.

Mr. *Onſlow*. I would not interrupt the Gentleman that ſpoke laſt before he had ended; but I muſt now, before this Gentleman goes on, inform your Lordſhips that an Incident hath happen'd, that the Managers think they are obliged to take Notice of. The Right Reverend Prelate is not by the Managers in the leaſt ſuſpected as to his Veracity, and the Truth of what he ſays; but in judicial Proceedings, eſpecially in a criminal Caſe, as this is, the Managers think Witneſſes of all Sorts are to be examined upon Oath; not, as I have ſaid, that they have any Doubt of the Reverend Prelate's Veracity; but for the ſake of the Precedent, and to prevent ill Conſequences, the Managers think his Lordſhip muſt, as all other Perſons do, give his Teſtimony upon Oath: Your Lordſhips have Precedents in the Caſe of my Lord *Strafford* and others. The Witneſſes, if Members of your Lordſhips Houſe, are to be ſworn at the Table, and give their Evidence in their Place.

Mr. *Serj. Pengelly*. My Lords, if it is inſiſted upon, that what the Reverend Prelate ſays ſhould be taken as Evidence; we humbly apprehend, according to the Rule of Evidence, he is to give his Evidence upon Oath. And this being ſo material an Incident, and the Proſecution having proceeded ſo far, we humbly beg leave to put your Lordſhips in mind, that it is inſiſted upon in Point of Teſtimony, that the Reverend Prelate would be pleaſed to be ſworn.

Lord *Lechmere*. No doubt but the Reverend Prelate ought to be ſworn. It was not taken Notice of. If the Prelate be called upon as a Witneſs, his Evidence muſt be upon Oath.

Biſhop of *Oxford*. My Lords, I ſhould be very ſorry to give any Offence to your Lordſhips; if the honourable Managers inſiſt upon it that I take my Oath, and your Lordſhips direct me ſo to do, I am as willing to give my Evidence upon Oath, as without it. I ſubmit it to your Lordſhips, whether you will look upon the Journals, to ſee how the Precedents ſtand.

Lord *Lechmere*. If it be inſiſted upon to look into the Journals, the Parties muſt withdraw.

Thereupon it was waved, and the Biſhop ſworn.

Biſhop of *Oxford*. My Lords, for the Advancement and Encouragement of Learning in the Univerſity of *Oxford*, I remember my Lord *Macclesfield* ſome time ſince, told me he was willing to allow conſiderable Salaries to Perſons that were ſtudious and ſober; and that this ſhould be done for the Advancement of any Sort of Learning in general, without reſtraining it to any particular Science or Faculty, and without any Relation to Party, provided the Perſons were worthy: And I deſire Leave to own to your Lordſhips, that otherwiſe I would not have had any Concern in it. I did, my Lords, recommend ſeveral Perſons, whom I thought proper Objects of his Lordſhip's Bounty; and at his Lordſhip's Requeſt, enquired the Characters of others, who had been before recommended to him. I have Reaſon to believe that ſeveral of theſe ſucceeded in his Lordſhip's Favour, and received bountifully from him. I dare not, at this Diſtance of Time, charge my Memory with particular Sums, but believe that the noble Lord aſſured me, he was willing, in the whole, to lay out this way, four or five hundred Pounds a Year. This, as near as I can remember, is the Subſtance of what I ſaid before.

Mr. *Robins*. My Lords, I ſhall preſume to take up very little of your Lordſhips Time, in obſerving on what has paſs'd at this ſolemn Aſſembly of the two Houſes of Parliament.

The Occaſion of it has been to examine into the Conduct and Behaviour of a Member of your own auguſt Body, during the Time he had the Honour to ſerve his moſt ſacred Majeſty in the high Office of Lord Chancellor.

And the Commons have faithfully diſcharged their Part, by omitting no one Circumſtance or Ingredient, that could poſſibly ſerve to heighten and aggravate the Crimes they have thought fit to lay to his Charge.

But whether after all, the Miſtakes, the Inadvertencies, the Example of others, and the Frailties even of human Nature itſelf, are not the whole, the Sum total of all this ſolemn and pompous Tryal, will I believe with many remain for ever the Queſtion.

'Twould not perhaps be for the Service of this noble Earl to ſay, that every Step he took, every Advance he made, for the Benefit and Relief of

the Suitors of the Court where he preſided, was the beſt that could poſſibly have been invented; 'twill, we hope, be ſufficient to ſay, that he ſincerely thought them the beſt: And if better have been ſince found out, which have prov'd more effectual to the ſame end, it only proves him not to have been infallible, which ſurely is no Crime.

And if the Actions of his private Life, his Juſtice, his Piety, his Charity, and his Compaſſion for others, may be allowed to caſt any Light or Reflection on his publick Conduct and Behaviour, I believe, my Lords, I may preſume to affirm that thoſe who are acquainted with his Innocence in the one, will never be brought to think him criminal in the other.

My Lords, I am afraid many are the Abuſes, the Corruptions and the Evils which have ſprung up in our Courts of Juſtice, even to the Diſparagement and Diſcredit of Juſtice itſelf. And Complaints of this kind have been made in almoſt all Ages, though at the ſame time they have been juſtly placed to the Account of ſome of the loweſt, and moſt inferior Officers and Miniſters, which are neceſſarily and unavoidably made uſe of in the Diſpenſation and Diſtribution of Juſtice.

And if an effectual Method of Cure could be found out for theſe; if thoſe who are to give the laſt Hand to the Completion of Juſtice were pure, the Streams would then run clear and undiſturbed to the end.

But, till that is done, till Means are applied for the purging and clearing theſe Channels, thro' which Juſtice muſt be conveyed, 'tis no wonder that the Fountains themſelves look as it were muddy, and polluted by Reflection.

But, my Lords, how deſirable ſoever theſe Ends may be, they are only the Work of the Legiſlature; a Chancellor, or a Judge, may ſit by and lament, but they cannot help them.

They are only to be effected by that Power, which has a ſort of Omnipotence; and when they are effected, I believe none will rejoice and congratulate themſelves more, than the many learned, great, and upright Men, which preſide in our ſeveral Courts of Juſtice.

In the mean time, my Lords, as the Sentence which is prayed againſt this noble Earl, will be of little Avail to ſtop the Miſchief; as 'twill in ſome ſort be a Puniſhment of the Innocent, and letting the Guilty eſcape: We are too well acquainted with your Lordſhips juſt and righteous Proceedings, to be in any Pain for this noble Earl.

Let ſelling of Places, taking of Preſents, or any other the known and uſual Profits attending great Preferment, be for ever aboliſh'd by a plain and explicit Law. And I believe I may preſume to ſay, that no Complaints of this kind will ever be made more; that *Weſtminſter-Hall* will never again be named in an Impeachment, and that your Lordſhips will have no Trouble of this kind for the future.

But this, my Lords, I am ſure I may venture to ſay, and I will ſay no more; that if it had been the Fortune of this noble Earl to have liv'd in ſuch happy Days, his Name would never have been tranſmitted to Poſterity in an Impeachment.

Mr. *Strange*. My Lords, we are now come to the Cloſe of the Defence, wherein to avoid Confuſion, I have hitherto confined my ſelf to the particular Part which it was my Duty to open; your Lordſhips will therefore permit me to take Leave of this auguſt Aſſembly with ſome few ſhort Obſervations both upon the Charge and the Defence.

Your Lordſhips did for four Days ſucceſſively ſit to hear this noble Earl arraign'd as the moſt corrupt, oppreſſive, and avaritious Perſon upon Earth: It was done too, my Lords, in a Manner, from which I ſhould have thought the Relation he bears to your Lordſhips would have been a ſufficient Protection; and without which the honourable Managers might very well have diſcharged their Duty to the Houſe of Commons, in laying the Caſe before your Lordſhips.

But, my Lords, whatever Reſentment this Treatment of one of your own Body might raiſe in your Lordſhips, I muſt for my own Part confeſs, that I heard it all with Pleaſure; as it was an open Acknowledgment, that all honeſt Art and legal Liberty were neceſſary in aggravating the Charge, and poſſeſſing your Lordſhips with that Opinion of the noble Earl, that the Gentlemen of the Houſe of Commons deſire you would entertain.

My Lords, the Charge in one general View conſiſts of an Accuſation againſt the noble Earl, either for doing what his Predeceſſors did before him, or for not doing what it is not pretended they ever did: A ſingular Misfortune to this noble Perſon, that the following ſuch great Examples ſhould in every Inſtance be imputed to him as a Crime.

As to the accepting Preſents for Offices, my Lords, we have fully proved to your Lordſhips, that the ſame was done by the Predeceſſors of the noble Earl within the Bar; and we muſt humbly inſiſt, that if the Statute of *Edward* VI. be taken as laying a Reſtraint upon that Practice, yet having put the Caſe, and ſaid what ſhould be the Conſequence, your Lordſhips cannot go out of that Statute to puniſh the noble Earl.

My Lords, it is the Miſery (I may ſay the Slavery) under which other Nations groan, that the Puniſhment for Crimes is arbitrary and variable, and that he who commits the ſmalleſt Offence may be put to undergo the moſt rigorous Puniſhment; but God be thanked, my Lords, *he hath not dealt ſo with this Nation*, but that *this People hath Knowledge of the Laws*; Crimes here are ſtated, and ſo, my Lords, are their Puniſhments; and give me Leave, my Lords, to ſay, that this is one of the main Channels through which our Anceſtors have deliver'd down to us that Liberty, which is the Glory of this, and the Envy of all other Nations.

My Lords, the Act under your preſent Conſideration puts the Caſe of accepting Money for an Office, and ſays, the Conſequence ſhall be the Loſs of Nomination: There are no Words that declare Offices were not ſaleable by Law, or that they ſhall not be ſaleable for the future, upon which to found a Proſecution by Indictment or Impeachment; though if ſuch Words were in this Act, I ſhould ſtill humbly inſiſt, that as well upon an Impeachment as upon an Indictment, the Statute, and that only, muſt be the Guide in aſcertaining the Puniſhment.

My Lords, the Articles have beſtowed many Epithets upon this Action; ſuch as illegally, corruptly, extorſively, *&c.* But your Lordſhips will not find them in this Act of Parliament.

And as to its being an Offence at Common Law, give me leave, my Lords, only to put you in Mind of three Proviſoes in this Act, which ſpeak the contrary in the ſtrongeſt Terms. The firſt is the Clauſe which confirms all Bargains then made, and which were to take Effect at a future Day. The next is a Declaration to what Offices the Act ſhall not extend, ſome whereof are of a publick Nature, as Keeper of a Foreſt, Manor, *&c.* And the third is that which takes Notice, that by Law the Judges might diſpoſe of Offices, and therefore leaves them to the full Liberty they had before the Act.

And if in this Impeachment we ſtand clear as to the Selling of Offices, then no Acts or Omiſſions towards raiſing the Price (if any ſuch had been proved) will make the Earl criminal, which is the whole of the Charge.

My Lords, your Lordſhips were told in a very moving Manner, that the noble Earl was purſued hither by the united Cries of Widows and Orphans——— But we have heard none: No Inſtance has been given of any one Preference in Judgment, of one Penny taken during the whole Courſe of his adminiſtring Juſtice to theſe Kingdoms, or of any one voluntary Complaint that has been made againſt the Earl; and yet, my Lords, he has been repreſented as if his Crimes were full blown, as if he had diveſted himſelf of Humanity, and taken Pleaſure in the Miſery and Diſtreſs of his Fellow Subjects; as one, whoſe only Motive of Action was inordinate Gain, and wicked Lucre; and as one overtaken by the Commons, triumphing in the Luxury of unpuniſh'd Crimes. You have been told too, my Lords, That *in him* Oppreſſion uſurped the Seat of Juſtice; that *by him* the Beauty of Juſtice was deformed, and *through his Means* Juſtice ſtood afar off, and Equity could not enter.—How little Ground, my Lords, there was for theſe Complaints, may, I think, be fairly inferred from the Defect of Evidence in this Particular, ſince after the ſtricteſt Scrutiny, both into his publick and private Life, your Lordſhips have not had one Witneſs appear at your Bar againſt him.

But, my Lords, ſince the Cries of Widows and Orphans were ſo much mentioned by the honourable Managers; we, who are Council for the noble Earl, thought it our Duty to ſhew your Lordſhips, that thoſe Cries were not *againſt* him as an Oppreſſor, but *to* him as a Reliever. And how little ſoever this noble Earl thought of having an Account of theſe Matters brought to your Lordſhips Bar, yet ſurely, my Lords, this is now a Circumſtance, under which it is lawful *for the left Hand to know what the right Hand doth.* And theſe Acts of Charity and Generoſity, which were not treaſured up for your Lordſhips Bar, but for a greater, are however proper to appear in this Place, in Vindication of the noble Earl againſt a Charge of Covetouſneſs and Corruption.

And now, my Lords, give me leave to add, That tho' the private manner in which theſe Charities were performed, has made it neceſſary for us to enter into a particular Account, and an Account that takes in ſome of them only; yet the noble Earl has a Merit to plead, of which I am ſure there is no Occaſion to call a Witneſs. Your Lordſhips all remember the Time when he preſided in the Queen's Bench, and ſaw (unmoved) the Tide of Preferment rolling towards a diſtant Shore. The true Intereſt of his Country in the preſent Royal Family was then his ſteddy Purſuit, and his Merit conſiſted in advancing it to the utmoſt. And his Majeſty, who was beſt able to judge of the Greatneſs of his Services, thought they deſerved a Reward proportion'd to the moſt exalted Merit, and therefore added him to your Lordſhips Body.

E. of *Macclesfield.* My Lords, I beg Leave that I may have the Liberty to lay before your Lordſhips ſome Obſervations on the ſeveral Parts of the Evidence given on both Sides.

Your Lordſhips will eaſily imagine, that a Charge of this Nature muſt have affected me very much, and the great Fatigue I have undergone hath not allow'd me the Liberty to conſider every Part ſo as to make the proper Reflections fit to lay before your Lordſhips.

I hope your Lordſhips will give me a little Time to recollect my Thoughts, that I may ſpeak in ſuch a Manner as is fitting to your Lordſhips. I deſire your Lordſhips will give me leave to make my Obſervations on *Monday* next.

Then the Managers and the Council withdrew; And the Houſe adjourned to Monday *Morning next, the ſeventeenth Day of* May.

Monday *the ſeventeenth of* May, 1725.

The Eighth Day.

THE Lords being ſeated in their Houſe, the Serjeant at Arms made Proclamation for Silence, as alſo the other Proclamation, that all Perſons concerned were to take Notice, that *Thomas* Earl of *Macclesfield* now ſtood upon his Tryal, and they might come forth in Order to make good the Charge.

Lord Ch. Juſt. King. Mr. *Serj. Probyn*, you may proceed.

Mr. *Ser. Probyn.* My Lords, I am humbly to ask your Lordſhips Pardon for ſome Omiſſions we have made in the Evidence we were inſtructed to lay before your Lordſhips in Behalf of the noble Lord impeached the laſt Day we had the Honour to attend your Lordſhips upon this Occaſion; we had ſome Witneſſes to offer more than were examined at that Time, and we hope your Lordſhips Indulgence will continue to hear them now; they are but very few, but yet ſuch as we apprehend are extremely material to the noble Lord's Defence. The laſt Evidence we laid before your Lordſhips related to ſeveral Charities given by the noble Earl, in order to ſhew that he was not of that avaritious Temper as hath been repreſented in Support of this Proſecution; and that the conſtant habitual Courſe of his Life and Actions hath been directly contrary to any Diſpoſition of this Kind; but we apprehend it would ſtill have greatly added to the Weight of this Evidence, had it at the ſame Time appeared to your Lordſhips what the Funds were out of which theſe Charities aroſe; that the real Eſtate which this

noble Lord hath purchaſed, does not amount to more than 3000 *l.* a Year, and that his perſonal Eſtate ſcarce exceeds 2000 *l.* When we have ſhewn this, it muſt ſatisfy your Lordſhips, that the noble Earl hath been much more charitable, than according to his Circumſtances he could afford. There is another Thing I beg leave to take Notice of, to obviate an Objection I am apprehenſive we ſhall hear of from the other Side; and that is, that theſe Charities were not given by the noble Lord out of his own Pocket, in regard there is a Sum of Money called Box-Money, which is laid out and diſtributed in private Charities by the Chancellor every Year. But to explain any Suggeſtion of this Kind, we ſhall ſhew that this Box-Money, though anciently us'd to be conſiderable, yet of late Years it hath not amounted to more than 172 *l.* a Year: And as there hath been always particular Objects of Charity recommended to this Bounty, ſo this Money hath been apply'd by his Lordſhip in the ſame manner it uſually was apply'd by his Predeceſſors; and that no Part of this Money ever went in any of thoſe ſeveral Charities, we have already given your Lordſhips an Account of.

Mr. *Serj. Pengelly*. My Lords, we beg Leave, on the Behalf of the Managers, to offer to your Lordſhips Conſideration, ſome Reaſons why they ought not to be permitted at this Time to go into the Evidence offered, after the Indulgence of many Days, and Defence made on the Articles, and the Evidence ſumm'd up by the Council for the Lord impeach'd; and a Day is only given to hear the Lord himſelf at his own Deſire, to ſum up or defend himſelf againſt the Charge againſt him; they ought not now to be allow'd to enter into a new Defence, or to give new Evidence. It is a new Method of Practice, after the Concluſion of the Council upon the whole Evidence, to ſay they have more Evidence to ſome of the Facts. My Lords, I don't know any thing of that Nature ever allow'd, eſpecially after the Examination cloſed, and an Adjournment for a Day or two. Beſides, as to that Part of the new Evidence which the Council have open'd, relating to the particular Eſtate and Circumſtances of this Earl, how can the Managers be provided to give an Anſwer to it? There is nothing in the Articles leading thereto; they do not charge him with having a great and large Eſtate, though that hath been formerly a proper Article in an Impeachment. But it is not made one in this Caſe; the Charge of the Commons is confined to particular Sums received. If the Managers had gone into the Enquiry of any other Sum, at leaſt without particular Notice to him, I believe it would have been objected againſt by the impeached Earl. Therefore to go into this ſort of Evidence, where there is no Charge by the Commons, is putting the Commons to anſwer what is not in Queſtion, which if they do, muſt lengthen out the Tryal unneceſſarily. If the Circumſtances of his Eſtate be material, there muſt then be a further Time given to contradict their Proof, which poſſibly may be done as to his real Eſtate: But as to his perſonal Eſtate, how is it poſſible for any Man to give an Account of that? Doth not this lye in his own Knowledge entirely? No Body can open his Cheſts or Cabinets at Home: So that it is impoſſible we ſhould know any more of it than what ſerves his Purpoſes. Therefore, my Lords, we ſubmit it, whether they ſhall be permitted to go into this Sort of Evidence, or whether your Lordſhips will enter into any farther Examination.

Mr. *Lutwyche*. My Lords, We think it is of great Conſequence to your Lordſhips, when an Evidence hath been ſo full, and with ſo great Patience heard to every particular Article; when that Evidence hath been ſumm'd up, and enforced by Council, and every Particular of the Articles animadverted upon; we think there is no Precedent in any Court of Juſtice, where new Witneſſes have, in ſuch a Caſe, been permitted to be examined. Witneſſes here have been produced; there hath been an Interruption of two or three Days for the noble Lord, at his own Deſire, to make his Obſervations on the Evidence; to offer now to produce Witneſſes that they had omitted to produce before, is perfectly new and unuſual. I ſuppoſe they had theſe Witneſſes in their Briefs, and if they had thought fit, they might have called them. I know of no Inſtance of the like in any Court of Juſtice; if the Gentlemen of the other Side will tell us the Precedent, they may. I think it is of dangerous Conſequence, not only in this Caſe, but in all other Proceedings in Courts of Juſtice. If your Lordſhips think fit to let them into one or two Witneſſes, I don't know why your Lordſhips, with equal Reaſon, may not let them go over another Courſe of Evidence.

My Lords, as to the other Matter about this noble Lord's Eſtate, that is not a Matter inſiſted upon by any Evidence that we have given; and I ſubmit it whether it is proper or any Way conducive in this Caſe, to any Thing that is material for your Lordſhips Judgment in this Matter, for this Reaſon, becauſe if it was material, it is impoſſible for us to know the Truth of it. We have no Right to examine this noble Lord upon Interrogatories as to his Eſtate, eſpecially as to his perſonal Eſtate; a Man may in theſe Days have the Opportunity of being worth 100,000 *l.* and People not know where it lies; as to his real Eſtate it might be known if it was material, but we ſubmit it whether it is incumbent upon us to inquire at this Time of Day into the noble Lord's Eſtate.

It is impoſſible in the Nature of the Thing that your Lordſhips ſhould have that ſatisfactory Account, or that we ſhould have ſuch Notice of it as is proper to make any Defence of it to us material; but we ſubmit it that it is not material at all, and therefore we hope your Lordſhips will keep to the Rule kept in all Caſes in all other Courts of Juſtice where People have made their full Defence, or elſe there would be no End of Things.

Mr. *Plummer*. My Lords, we did not lay to the Charge of this Earl that he was poſſeſſed of a great Eſtate, we have only laid to his Charge what he hath unjuſtly poſſeſſed, we have only charged him with Matters of Fact, which we think we have made out, and therefore hope your Lordſhips will oblige him to anſwer to that, and to that only, and not go to another Thing we have not charged.

Mr. *Serj. Probyn*. My Lords, we apprehend it is

is frequently practiſed, that where Council have omitted material Evidence, even after Summing up, the conſtant Indulgence of the Courts below lets them go into Evidence to ſupply that Omiſſion.

We take it to be our own Fault. We had in our Inſtructions, and it is in your Lordſhips Breaſt, whether we ſhall not ſupply that Omiſſion, we ſhall not run into a long Evidence, our Witneſſes are but two or three.

Dr. *Sayer*. My Lords, I beg leave to think, that as we point out a particular Fact, diſtinct from any we have examin'd to before, there can be no apprehenſion of any Danger at all; and if, as the Gentlemen have inform'd your Lordſhips, it is what is uſual in Courts below, that ſuch Omiſſions have been always permitted to be ſupply'd, your Lordſhips ſure will act with equal Equity in this Caſe. What we undertake to prove is the Circumſtance of his Eſtate; and though the Gentlemen of the Houſe of Commons did not make it a Matter of Charge in their Articles, yet in his Anſwer the Noble Earl takes Notice of it, and it will ſhew that the Earl had not his Heart ſo intent upon Gain, when it ſhall appear that his Fortune is ſo much leſs than the World might have imagin'd it to be, and when at the ſame time we ſhew his Generoſity, and that by means thereof his Eſtate was much leſſen'd and check'd.

I would take Notice of the other Matter, with regard to the Evidence of the Charity: It is only to explain and prevent a Miſtake, leſt it ſhould be imagin'd that theſe ſeveral Inſtances of Charity were out of the Box-Money, or Fund for Charity in the Court of Chancery. But, I believe, we need not trouble your Lordſhips with this, for that the Noble Earl is ſo well ſatisfy'd with the Integrity and Honour of the learned Managers of the Houſe of Commons, that he is under no apprehenſion to have that turn'd upon him. The principal Matter is relating to his Eſtate.

As we have in great Meaſure left it to the Earl himſelf to ſum up the ſeveral Evidences, and have done but little ourſelves, the Objection of the Evidence being clos'd and ſumm'd up is not ſo ſtrong as in other Caſes; we ſubmit it, whether your Lordſhips will not indulge us ſo far as to produce a Witneſs or two to this Matter.

Mr. *Com. Serj.* My Lords, we do not ask this as a Matter of Right, but as a Matter of Indulgence. I own the Rule that the Gentlemen of the Houſe of Commons have laid down is a general Rule for the Government of Evidence.

We can't controvert that, but I believe it will not be controverted on the other ſide, that ſuch a piece of Indulgence was hardly ever deny'd, and we hope your Lordſhips will not deny it upon this Occaſion.

Earl of *Macclesfield*. My Lords, I don't apprehend that this is a thing ſo very extraordinary, or ſo dangerous, as hath been repreſented. It would be extremely ſevere if, in a Cauſe of ſo great Length, and ſo much Fatigue, I ſhould have Witneſſes ready to give your Lordſhips an Account of ſome Facts material for my Defence; and my Council happening not to call them, although they were attending, and there ſhould be a certain Form that ſhould exclude me from having the Benefit of their Evidence; I don't know what this is founded upon, I never heard of ſuch a Form or Rule.

There is no Inſtance that where Council hath been ſumming up the Evidence, and, before the other Side have replied, an Omiſſion hath been diſcover'd, that that Omiſſion hath not been allow'd to be ſupply'd. And,

I appeal to my Lords the Judges, Whether they have ever known this piece of Indulgence denied upon any Tryal whatſoever in the Courts below. My Lords, with great ſubmiſſion, the Evidence is not yet finiſh'd; I am ſorry I muſt yet give your Lordſhips the Trouble of obſerving a good many things that have been hitherto omitted: This is a Matter the Council had Directions about, the Witneſſes were attending, but they were omitted to be call'd for; I hope your Lordſhips will not, for ſuch a Miſtake, exclude me the Benefit of their Teſtimony: Had it been calling freſh Evidence to any Matter that hath been examined to before, there might poſſibly be ſome Grounds for an Objection of this kind; but I mean only to call one or two Witneſſes to freſh Matter, that hath not been enquired into before. There hath yet been no Witneſs examined as to the Box-Money, or my real or perſonal Eſtate; and yet thoſe two Things are material, and it may greatly turn to my Prejudice if I have not the Liberty of producing this Evidence in relation to them.

It hath been repreſented that I have an Eſtate vaſtly more conſiderable than in Truth I have; and this Matter of the Box-Money, as I have been inform'd, gave Birth to a Report abroad, as if what I gave for Charity was out of that Fund.

As to this latter, I dare truſt the Candour of theſe Gentlemen, that they do not believe it; and if they do not inſiſt that what I gave was out of the Box-Money, it will be needleſs for me to prove that it was not. But as to the other Matter, I hope I ſhall not be precluded from having thoſe Witneſſes examin'd, becauſe it was before omitted; wherefore I humbly beg your Lordſhips Directions thereupon, whether I ſhall be at Liberty to lay their Evidence before your Lordſhips or not.

Mr. *Onſlow*. I would beg leave to ſet your Lordſhips right as to that of the Box-Money. The Noble Lord inſinuates as if ſomething of that had been mention'd by the Managers; nothing hath been mention'd of it, either by the Evidence or by the Managers.

Earl of *Macclesfield*. No, I beg leave to explain my ſelf; I did not ſay the Managers had inſiſted upon it, but only ſaid it is a Matter that I have heard without Doors; but I believe I may rely upon their Candour that they will not make it an Objection now, in caſe they oppoſe my giving Evidence to the contrary.

Mr. *Lutwyche*. My Lords, I am a little ſurprized, why the Noble Lord mentions this of the Box-Money, when not one ſingle Word hath been ſaid of it, either by the Evidence or by the Managers: Why then ſhould this Noble Lord himſelf mention it? And why ſhould he call Evidence to a thing that hath no manner of relation to any thing that hath been ſaid? If his Lordſhip will pleaſe to give us leave to reply; if we then ſay any thing of it, he may then give an Anſwer to it; but it is improper now to be giving an Anſwer to an Objection that was never made, and to which the Evidence hath not ſaid one Word.

Lord Steward. If the Noble Lord thinks this a Point to be inſiſted on, it is then neceſſary for all to withdraw.

Order'd to withdraw, which was done; and being afterwards called in again,

Lord *Chief Juſtice King.* Mr. *Serj. Probyn*, it is the Opinion of their Lordſhips, that the Evidence offer'd by the Earl of *Macclesfield*, with reſpect to the further Account of his Charity, be not now admitted; and they are likewiſe further of Opinion, that the Earl of *Macclesfield* be not now permitted to give Evidence of the Value of his Eſtate, either real or perſonal.

Earl of *Macclesfield.* My Lords, your Lordſhips were pleas'd to indulge me to this Day to lay before your Lordſhips what I had to ſay in my Defence, againſt the Charge brought againſt me by the Commons, and againſt the Proof ſupporting that Charge, which your Lordſhips with ſo much Patience heard. From the Time your Lordſhips were pleas'd to allow me this Liberty till now, I have apply'd my ſelf with the utmoſt Diligence to prepare my ſelf for my Defence.

To this End it hath been neceſſary to look over the Notes, taken of the Evidence given on both ſides, and likewiſe of what was ſaid by thoſe Gentlemen who are Managers for the Houſe of Commons. I find it very neceſſary to lay before your Lordſhips many Obſervations on the Evidence, which depend upon an exact comparing of them together. It being a matter that hath taken up ſo much Time, and there being ſuch a Diſtance between the Evidence given on the one ſide and the other, I have been employ'd wholly from the laſt Time till now in the Conſideration of it; and I can ſay with Truth, I have not ſlept five Hours theſe two Nights, and yet I have not been able to get through it, and I am not now prepared to lay before your Lordſhips what I have humbly to offer for my Defence; there are many Things exceeding material to be ſubmitted, and I beg therefore, that your Lordſhips will indulge me a farther Time, ſo that I may be able to do it in ſuch a manner, as may ſet the Evidence and Obſervations upon it in ſuch a light as your Lordſhips may paſs a proper Judgment. I don't do this out of Delay; I believe your Lordſhips will eaſily imagine I ſhould be glad to have this matter over, whatſoever the Event may be, for I am quite ſpent, and my Strength and Spirits waſted with the Fatigue I have already undergone. My Lords, I have been ſo far from any Delay in the Courſe of this Proſecution, that when I put in my Anſwer, as your Lordſhips were inform'd by one of the Gentlemen of my Council, that tho' it was not finiſh'd till between three and four a-Clock in the Morning, yet I choſe to get it ingroſs'd, and put in the ſame Day, rather than there ſhould be the leaſt Appearance of any Delay on my Part; and I do not know whether by endeavouring ſo very much to diſpatch this Work, I have not render'd my ſelf unfit and unable to go on with it: Human Nature can hardly bear what I have gone through.

At my Years, if I ſhould undertake to do it by to-morrow, I am afraid I ſhould ſink under the Weight of ſuch a Task, and not be able to come before your Lordſhips prepared as I ought to be; therefore I hope your Lordſhips will be pleas'd to allow me till the Day after; the Fatigue I have already undergone has been very great, and I hope your Lordſhips will allow me ſuch a Time as you will think competent; the Work I have to do will take up a great many Hours; there hath been Variety of Evidence, I hope your Lordſhips will indulge me till *Wedneſday*; it is of very great moment to me, and I am ſure I ſhould be unwilling to miſpend your Lordſhips Time, and delay this Matter unneceſſarily: It really gives me the greateſt Uneaſineſs to find my ſelf in that Condition, that I cannot think of being able to do it ſooner; I was before afraid that I ſhould not be able to do it by this Day, but yet reſolv'd to do all that was poſſible for me, and therefore declin'd asking then for any longer Time.

I hope your Lordſhips will indulge me; if your Lordſhips knew the Fatigue I have undergone, and the Effect it hath had upon my Health, I am ſure in Humanity you would make no Difficulty of granting me farther Time to prepare my ſelf in a proper manner, in a Caſe that is of ſo great moment to me; and I hope the Gentlemen of the Houſe of Commons will not be againſt it; if they ſhould overpreſs this matter, I don't know but the Fatigue of it may bear ſo hard upon my Life, as to ſave your Lorſhips the Trouble of paſſing any Judgment upon this Occaſion.

Mr. *Serj. Pengelly.* My Lords, we don't apprehend the Lord properly applies to us in this Inſtance.

All Parties were directed to withdraw, which being done

The Houſe adjourn'd till Wedneſday *Morning Ten a-Clock, the* 19th *of* May, 1725.

Wedneſday, May 19. 1725.

The Ninth Day.

THE Lords being ſeated in their Houſe, the Serjeant at Arms made the two uſual Proclamations, as on the former Days.

L. Ch. Juſt. King. Mr. *Serjeant Probyn*, if you pleaſe to proceed.

E. of *Macclesfield.* My Lords, I am firſt to return my moſt humble Thanks to your Lordſhips, for the Time you have been pleas'd to indulge me with, for recollecting my Thoughts, and looking over the Evidence that has been offer'd on either ſide, during the Courſe of this tedious Proceeding; that I might be able to put thoſe Obſervations I have made upon it in ſuch a light, as became one who was to ſpeak in a Caſe of ſo great Importance, at your Lordſhips Bar.

My Lords, I have been under ſome Misfortunes in this Proſecution; your Lordſhips muſt, no Doubt, have obſerv'd the Diſappointments I have met with, in Queſtions I asked of ſome Perſons, who appear'd as Witneſſes in the Courſe of this Tryal, which it was impoſſible I could have had any Inducement to propoſe, but from my own Knowledge of the Anſwers that ſhould have been return'd. My Council, thro' the great Hurry that uſually attends Proceedings of this Nature, happen'd

happen'd not to be inſtructed in ſome Particulars, that were exſtreamly proper to have been laid before your Lordſhips upon this Occaſion: Beſides that, the Variety of the Facts, continu'd to be given in Evidence from one Day to another, has in this particular Caſe been carried on to ſuch an unuſual length, that they have not been able in the End to make themſelves ſo perfect Maſters of the Evidence, as the Importance of the Caſe requir'd.

I ſhould trouble your Lordſhips with an Apology for my own Inability to ſupply this at preſent, both from the extream Fatigue I have undergone during the whole Courſe of this Proſecution, as becauſe that my laſt Illneſs has broke my Memory to a great Degree. But whatever Difficulties I have labour'd under, when I conſider your Lordſhips are my Judges, I cannot doubt but your Candour and Goodneſs will have a due Regard to them, and make Allowance for the Want of Order or Accuracy in any thing I have to lay before you; and therefore, rather than ask any more Time of your Lordſhips for preparing my ſelf, I will endeavour to go on now as well as I can.

My Lords, the Charge brought againſt me is very heavy, as laid in the Articles, and highly exaggerated by the Gentlemen that are appointed Managers by the Houſe of Commons.

That which I think is charg'd as the Foundation of the whole is,

My entertaining wicked and corrupt Purpoſes, to raiſe and procure to my ſelf exceſſive and exorbitant Gain and Profit.

This it is that hath made me extorſively and illegally take Money, upon the Admittance of Maſters, and Diſpoſal of other Offices.

And the being ſet upon the Gain ariſing from the Maſters Places, with the Deſire to advance it, or keep it up, is repreſented to be the Source of all the reſt of the Things complain'd of, which ſeem to me to be charg'd only as Contrivances for that Purpoſe.

This is ſuch Corruption of Heart, and carries with it ſuch a Malignity, that it makes every Action and every Omiſſion criminal: Every raſh Word, every Neglect or Imprudence, nay Things perfectly innocent in their own Nature, or perhaps commendable, are ſo infected by it, as to deſerve the ſevereſt Cenſure and Puniſhment.

Whether I wait in Expectation of the Application of the Suitors, with Reſpect to *Dormer*'s Deficiency, or of my ſelf endeavour to get it made good, or even pay my own Money towards it, it is all one, ſo wicked a Heart corrupts all.

And the Violation of my Oath as Lord Chancellor, and of the great Truſt in me repos'd, contrary to the Duty of my Office, is made the Aggravation of almoſt every Article.

I ſhall endeavour to ſhew your Lordſhips, that the ſeveral things charg'd upon me are either not true, or not criminal; or if your Lordſhips ſhall judge otherwiſe of them than I do, yet that they were the Effects, not of Wickedneſs but of Miſtake; and if I have ever done any thing for the Service of my Country, of the Conſtitution, of his Majeſty, and of the Royal Family, and the preſent Eſtabliſhment, and for the Adminiſtration of publick Juſtice, it might not be unſuitable to the unparallell'd Goodneſs of this Reign, for your Lordſhips to have Compaſſion upon the Errors, Miſtakes and Weakneſſes of the faithful ſteddy Servant of a Prince, whoſe Mercy has been ſo often extended, in ſo great a Degree, to the higheſt Crimes of his bitter Enemies.

Before I enter upon my particular Defence, I beg leave to take Notice of ſomething that has been ſaid with Relation to the Anſwer which I have put in to theſe Articles of Impeachment, as containing a Plea of a Pardon at the ſame Time that I inſiſt upon my Innocence; and it's not being a full Anſwer to all the particular Charges in the Articles. As to the firſt, my inſiſting on his Majeſty's moſt gracious, general and free Pardon for all things before the twenty fourth of *July* 1721.

My Lords, I hope, and am my ſelf of Opinion, that I have not done any thing that is criminal, or needs a Pardon.

But when ſo many Gentlemen of Learning and great Parts, undertake to make out, that That is a Crime which I thought and ſtill think not ſo; ſhould I opiniatre to that Degree, and be ſo confident that your Lordſhips will be of my Opinion, as to refuſe the Benefit of a Pardon, which his Majeſty has ſo graciouſly granted to all his Subjects?

When little Imprudences, and ſo many Omiſſions, and even idle Words, looſe Talk, and unguarded Expreſſions, are laid to my Charge as Crimes, and made the ſubject Matter of an Impeachment; and ſome of them charg'd without mention of any Time, or the Name of the Cauſe in which it is pretended they were ſpoke, or any other Circumſtances by which I might be enabled, either my ſelf to recollect or to make Enquiry of others, in order to prepare for my Defence; it had been Folly in me not to have taken Advantage of the Pardon.

And as for the Reflexion intended, to expoſe the Abſurdity of pleading Innocence and a Pardon to the ſame Offence; what is more conſiſtent than to ſay, I ought not to be puniſh'd, becauſe the Fact charg'd is no Offence, or if it be one it is pardon'd? But had the Gentleman who made it been pleas'd to have read the laſt Act of Grace carefully through, he would have found that it expreſſly provides, that the Pardon ſhall ſupport the Plea of Innocence, and upon *Not guilty* pleaded, the Act may be given in Evidence to prove the Perſon not guilty. And, in the Notion of our Law, it wipes away whatever Guilt there was, and leaves the Perſon innocent, that is, as a very great Lawyer and a very wiſe Man expreſſes it, *it takes away not only* pœnam *but* reatum, *the Guilt as well as the Puniſhment.*

As to the Reflexion made upon my Anſwer in another reſpect, as if it were not full and direct, and tha in Chancery, the Court where I had preſided, it would be held an inſufficient Anſwer. Probably it might be ſo; but that is, becauſe that a Plaintiff there has a right to require a Diſcovery of all ſuch Facts as are material for his Advantage, upon the Oath of the Defendant. And therefore the Anſwer is not only the Parties own Defence, but it is to ſupply the Plantiff with Evidence, who therefore may except to it as inſufficient, ſo far as it is ſhort of anſwering to, and giving

ving an Account of all, of every minute Circumſtance that he charges.

But do they imagine that to be the Caſe in a criminal Proſecution? or that the Defendant there is obliged to furniſh Evidence, or to confeſs any thing that may tend to affect or charge himſelf? No, my Lords; the Anſwer there is only for the Defence of the Perſon accuſed: And not guilty is a full Anſwer.

And, my Lords, I inſiſt upon it, I have given a full Anſwer to all the Articles at the end of my Anſwer, where I have pleaded the general Iſſue, and in expreſs Words ſaid, that *I am not guilty of all or any the Matters contained in the Articles, or any of them, in manner and form as they are therein charged againſt me*; which is of it ſelf a direct and full Anſwer, without more.

And tho' I have ſet forth other Facts, it is only where I have thought ſome things might be farther explain'd. But there is no need to make any Proof of a Word in my Anſwer, if the Charge in the Articles is not ſupported by the Evidence given againſt me.

And I ſtill hope your Lordſhips will be of Opinion, that tho' ſome of the Matters mention'd in the Articles are proved, and indeed ſome are expreſſly admitted by me, and others never diſputed; yet that none of them is admitted or proved in *ſuch manner as it is charged in the Articles*.

Having ſaid thus much, I proceed to conſider what has been offer'd in *Proof* againſt me.

My Lords, The Preamble of the Articles is intended for an Aggravation of my Crimes, by ſhewing what Oath I had taken, which I had violated; and what Favours I had receiv'd from his Majeſty, and was not ſatisfy'd with them.

As to the laſt, give me leave to ſay, that I can never expreſs the Senſe of my Heart for his Majeſty's Favours and Bounties, and that it ought to be a high Aggravation if I have abuſed them.

I pretend to no Merit, but that of a Heart full of Duty and Zeal for his Service; but his Royal Grace and Goodneſs has exceeded, not only my poor Services, but even my Deſires and Wiſhes.

And whatever becomes of me, in whatever State of Life I am, my Gratitude and Duty ſhall never abate.

As to the Violation of my Oath, no ſuch Crime is made out againſt me.

The Oath of Office taken by the Chancellor when he enters upon that Office, has no relation to what is laid to my Charge: I have ſet it forth *verbatim* in my Anſwer, and no Argument has been attempted to be drawn from it.

But it was ſaid the other Day, that I had taken an Oath upon the Statute of the twelfth of *Richard* II. which I had *forgot*, *both in my Anſwer and in my Conduct*.

As to my Anſwer, I beg leave to obſerve, that the Anſwer is ſuited to the Charge. I am not charged in the Articles to have ever taken any Oath upon that Statute, nor is the Oath ſuppos'd to be taken on the third of *November* at all mention'd.

The Words of the Preamble, which is the only Part of the Articles that mentions my taking any Oath, are theſe:

" And whereas *Thomas* Earl of *Macclesfield*, in " or about the Month of *May*, in the Year of " our Lord 1718, by the Grace and Favour of his " Moſt Excellent Majeſty, was conſtituted and " appointed Lord Chancellor of *Great Britain*, " and did *thereupon take the uſual Oath* for the due " Execution of that High Office, whereby he did " ſwear well and truly to ſerve our Sovereign " Lord the King and his People, poor and rich, " after the Laws and Uſages of the Realm, and " *ſuch other Oaths as have been accuſtomed*; and the " ſaid Earl continu'd in this great Office, *&c.*

Where the *other Oaths accuſtomed*, as well as that particularly *deſcribed*, are confined to what I did *thereupon* take, that is, *upon my being made Chancellor in May* 1718. At leaſt to my poor Underſtanding it appear'd ſo. Nor did I at all imagine, that it referred to what was done the third of *November* after, which was but the ſame as had been done the third of *November* before.

And accordingly my Anſwer is confined to the *ſame Time* that I was ſworn Lord Chancellor before his Majeſty in Council, the fourteenth of *May* 1718. when I took the Oath of Office ſet forth in the Anſwer; and at the ſame time took the Oath of Allegiance and Supremacy. And there is no Pretence that I took any Oath upon the Statute of *Richard* II. at *that Time*.

The Words of the Anſwer are.

" That in the beginning of *May*, in the Year " 1718. he the ſaid Earl was, by his Majeſty's " great Grace and Favour, appointed Lord Chan- " cellor of *Great Britain*, and was ſworn before " his Majeſty in Council the fourteenth Day of " that Month; when the following Oath, be- " ing the uſual Oath of Lord Chancellor, was " adminiſtred to him, *viz.* you ſhall ſwear, *&c.* " And the ſaid Earl, *at the ſame Time*, took the " Oath of Allegiance and Supremacy, but *no* " *Oath of Office beſides* that above ſet forth.

My Anſwer therefore plainly relates to what was charged, and my taking no Notice of any Oath upon this Statute, ought not to be imputed to Forgetfulneſs, but to its not being charged. It is not charged, and therefore not anſwer'd to.

But it is now inſiſted upon, and great Streſs laid upon it, that at the naming of Sheriffs, which is done in the Exchequer upon the third of *November* every Year, I took an Oath upon the Statute of 12 *Richard* II. which extends to the Diſpoſal of the Office of Maſters in Chancery.

To judge of the Truth of this new Charge, your Lordſhips will be pleaſed to conſider what it is that is yearly done the third of *November*, upon that Occaſion of naming of Sheriffs.

The Managers were not pleaſed to open what paſſes every Year upon the Nomination of Sheriffs, which had been proper before they called the Witneſs to prove it; if they had, it might have ſaved me the Trouble of asking any Queſtions.

But the Examination, and the Teſtimony of a Witneſs that ſpoke indiſtinctly and low, tended, as I thought, to have the Statute enter'd in the old Book of the Exchequer in obſolete French, and ſo ill read as hardly to be underſtood, to paſs for the Form of an Oath then adminiſter'd

adminiſter'd upon the Statute which had been juſt before read in Engliſh to your Lordſhips at the Table; and ſo it might be taken to be an Oath conceived in the Words of the Statute, extending to all Nominations of Officers, and to all Times, and not confined to that Occaſion.

I did therefore ask ſome Queſtions, not to quibble away an Oath, as one of the Managers was pleaſed to expreſs it, but to have the Matter laid before your Lordſhips in it's true Light, and which came out to be thus.

The Lords of the Privy-Council and the Judges, being aſſembled for naming Sheriffs for the following Year, at the Time and Place appointed for that Purpoſe, the Act of Parliament of 12 *Richard* II. is read, directing ſeveral Perſons to be ſworn, concerning their naming of Sheriffs, and of ſome other Officers ſpecify'd in the Act, and with general Words extending to more; then an Officer gives a Bible to every one of the Privy-Counſellors and Judges preſent, who all, one after another, kiſs it; but nothing is ſaid to them by the Officer or any one elſe, nor are any Words ſpoken by them.

I know it has been much doubted how this could be called Swearing, or taking an Oath.

But that is not at all what I inſiſt upon.

There being ſomething ſacred in the Ceremony, I agree the Action ſhould be conſider'd as a ſolemn Undertaking in Nature of an Oath, to obſerve that Statute in the Buſineſs we were then entring upon; and ſo it is an Engagement to proceed then to name Sheriffs according to the Direction in that Statute.

And accordingly this is repeated every Year upon the like Occaſion, though the Perſons are the ſame, and has been ſo by me for ſeven Years together before I was Chancellour, and for as many ſince.

But to extend this farther than that Occaſion, is, I humbly inſiſt upon it, going beyond what the Action then done imports.

The Statute plainly relates to Nominations or Elections, where Numbers of Perſons are called together to name Officers; the very reading the Statute ſhews it, and when I come to ſpeak of the Conſtruction of that Act of Parliament, it will be yet more plain.

And when it provides, "That the Chancellor, "Treaſurer, Keeper of the Privy Seal, Stew-"ard of the King's Houſe, Chamberlain of the "King, Clerk of the Rolls, Juſtices of the one "Bench and of the other, Barons of the Exche-"quer, and all others, *who ſhall be called* to ordain, "name, or make Juſtices of the Peace, Sheriffs, Eſ-"cheators, Cuſtomers, Comptrollers, or any other "Officer or Miniſter of the King ſhall be firmly "ſworn, *&c.*" I take it to mean that they ſhall be ſworn when they are ſo called together, and met. And the Practice is accordingly.

There are ſome old Statutes that ſay, that the Chancellor with the Council ſhall appoint Juſtices of the Peace, the Treaſurer with ſome others ſhall name Cuſtomers, *&c.* But the Uſage at this Time is, (and it has been ſo for ſome Hundreds of Years) that the Naming of Juſtices of the Peace, is in Fact in the Chancellour only; of Cuſtomers and Comptrollers, in the Treaſurer; and many of the Perſons named in the Statute meddle not with naming any of the Officers comprized within either the particular or general Words.

If therefore, my Lords, the Biſhops were deſired to draw up a Form of an Oath to be taken upon this Statute by all the Perſons attending on the third of *November* for the Naming of Sheriffs, I preſume they would confine the Oath to the particular Occaſion.

I ſubmit to their Conſideration, whether they would draw it up ſo, that every one preſent ſhould ſwear that he would obſerve this Statute, or not go contrary to this Statute, in the Nomination of Officers which he has not any Right or Power to name, nor is ever called to name. Whether they would frame ſuch an Oath, whereby the Judges ſhould ſwear that they would not name Juſtices of the Peace, Eſcheators, Cuſtomers, or Comptrollers, for Gift or Brocage, Favour or Affection, when they cannot name them at all, either by Proviſion of Law or by Uſage.

I apprehend this would be an improper, if not a vain Oath.

And a conſtructive taking of an Oath, which is all that can be inſiſted upon here, ought not to be carried farther than would be proper to expreſs in Words at length.

And therefore, as all the Perſons aſſiſting there certainly take the ſame Oath, and many of them have nothing to do with the Choice, or naming of any of the other Officers in the Act beſides Sheriffs; and as this Action yearly repeated on this particular Occaſion, ſhews it to be intended to relate only to Sheriffs; I have always thought that it went no farther than to oblige me, that in the Affair, which we were then entring upon, I ſhould act according to that Statute.

And I am perſuaded, that in this Caſe, I have the univerſal Concurrence of the Judgments of others. For I do not believe that ever any Perſon that aſſiſted on that Occaſion, had the leaſt Apprehenſion of his then taking an Oath, which related to any thing but that particular Occaſion.

But if they all did take an Oath, ſo extenſive as to reach to the Diſpoſal of all other Employments, (which is the Senſe wherein I believe the Managers would have the Words of the Act to be underſtood,) God knows in what Guilt many of them have involved themſelves.

It is a Part of the Statute, and Part of that to which the Perſons called to name Officers are directed to be ſworn, *That none who ſues by himſelf, or by any other, in private, or openly, to be in any manner of Office, ſhall be put into the ſame Office, or any other.*

Will theſe Gentlemen urge that every Lord Treaſurer, Lord Commiſſioner of the Treaſury, or other Lords in great Employments, that give Places, or name Perſons for Places to the King, and have once attended at the naming of Sheriffs, have been guilty of a Violation of this Oath, in every Inſtance, where they have named any Perſon to any Office, who, by himſelf, or his Friends, ever asked for the Place given, or for any other?

I can-

I cannot imagine that they will attempt to carry it ſo far. But if they do, I will yet preſume, that your Lordſhips will not, by ſuch a new Conſtruction, condemn ſo many Perſons that are innocent, or thought themſelves ſo.

Hence I think my ſelf not to have taken any Oath upon the Statute of 12 *Ric.* 2. which any way extends to Maſters in Chancery; and I hope your Lordſhips will think ſo too.

What is the particular Meaning of this Act, and what Arguments may be drawn from the Proviſion therein, I ſhall not trouble your Lordſhips with at preſent, but ſhall reſerve the Conſideration of it for another place. But as to the Charge of violating an Oath founded upon it, let the Obſervations I have made, from the Frame of the Act and the Nature of the Action at preſent ſuffice.

The ſubject matter of the firſt Articles, as they ſtand in order, and which I believe has given riſe to this Proſecution, is the taking Money for the Places of Maſters in Chancery; long practiſed without Blame, though made my great Crime.

What has been urged from the Nature of the Office, the Oath which the Maſters take, and the Commiſſions granted to them, together with the Maſter of the Rolls and the Judges to hear Cauſes in the Abſence of the Chancellor, will not have any Weight in the Queſtion, whether it be criminal to take Money on admitting them.

I beg leave to ſay, that the Office anciently was quite different from what it is now, ſo that it is in a manner forgot what it originally was. One Branch of thier Office anciently, and then reckoned of Importance, was the framing Writs, which are now made out by the Curſitors; and that which is their greateſt Buſineſs now, there appear no Footſteps of being done by them, or any others anciently.

Their Buſineſs now is chiefly preparatory to the Determination of the Court of Chancery upon References made to them by the Court, in order to their ſtating Things to the Satisfaction of the Parties; or reducing the Diſpute to ſome few Heads, in which they differ, for the eaſier Determination of the Court.

And that which they are moſt generally employed in thus, is matter of Accompts.

Very frequently the Parties, after having had the Items examined and proved, agree before the Maſter the whole Accompt, and almoſt always the greateſt part of it. And if the Parties are diſſatisfied, they are at Liberty, by Objections in Writing which are called Exceptions, to ſtate to the Court the diſtinct Items which they diſpute, by which means the Court is eaſed of the Conſideration of all the reſt of the Items of the Accompt. And the Maſter makes no judicial Determination; but when he makes his Report has only done the Drudgery of an Accomptant, compared Vouchers, heard Objections, convinced the Parties, as far as he could, and then ſtated the whole Accompt ſo as he thinks is right; which at laſt has its Force, not from him but from the Court, which confirms it if not diſputed, or examines the diſputed Points if deſired.

Upon References to them whether Anſwers are ſufficient, they are to compare the Words of the Anſwer with the Words of the Bill, and ſtate whether they find them full: And if the Parties do not acquieſce in the Maſter's Opinion, the Court takes the Trouble to make the Compariſon.

They are likewiſe Caſhiers, not of the Court but of the Suitors, and always at their Prayer.

And the Parties have this Advantage in having the Maſters for their Caſhiers, that they have a ready Method to compel Payment by Order of the Court, and a Commitment of the Perſon or Sequeſtration, (that is ſeiſing all their Eſtates and Effects,) or both, upon ſuch Order, in a ſhort and cheap way; whereas againſt other Caſhiers they muſt be put to the Charge and Delay of a tedious Suit, if the Money be not paid.

And other Officers, whoſe Places are allowed to be ſold, do the ſame Things, make Reports to State Facts on References, are Caſhiers of the Money brought in, and tax Coſts, which is another thing the Maſters do.

As to the Oath; it is the old Oath, before the Office was ſo greatly changed; what Advice to be given to the King it refers to, will be hard I believe to explain, and has not been attempted; but if the Writs requiring their Attendance here were looked into, poſſibly it may be thought, that anciently they attended your Lordſhips in a manner different from what they now do, and have done from before the time of our Memory.

And as to the Commiſſion to hear Cauſes in Abſence of the Chancellor, that makes no more Variation in the Nature of their Office, than it doth in the Office of Clerk of Aſſize, (expreſly allowed in the Statute of *Edw. 6.* to be diſpoſed for Money) that the Clerk of Aſſize is conſtantly joined with the Judges in the Commiſſions of *Oyer* and *Terminer* and Goal Delivery, for the Tryal of Criminals, even for capital Crimes.

To proceed therefore to the Points of the Charge.

It is founded ſingly, upon the *taking Money* for admitting the Maſters into the Office; and the *manner* of taking it extorſively, without reference to any want of Qualification in the Party admitted; and therefore cannot be maintained, unleſs the taking Money be in all ſuch Caſes criminal, or that the manner of taking or extorting it in theſe Caſes make it ſo.

Therefore I will firſt ſpeak to the general Queſtion, whether taking Money upon Occaſion of putting in a Maſter, is in all Caſes criminal in itſelf, or by the Common Law, or made ſo by any Statute which ſubjects it to any Judgment or Puniſhment,

ment, which can be prayed in this Proſecution; as I have expreſſed it in my Anſwer.

And that which I humbly inſiſt upon as to the firſt, that is, whether it can be ſaid to be wicked or criminal in it ſelf or from the Reaſon and Nature of the Thing, is this:

An Office may be conſidered in two Reſpects; Firſt, with Reſpect to the Duty; that is, the Concern of the Publick; that the Perſon be duly qualified to diſcharge his Office well. Secondly, with reſpect to the Profit and Advantage; and that is meerly private, and concerns the Officer only. And whilſt he diſcharges his Duty well, without Extortion, or other Misbehaviour, the Publick is little concerned in it, whether the Profit be more or leſs. As in thoſe Offices, which are very numerous and of great Conſequence, that may be executed by Deputy; provided the Deputy behave himſelf well, the Publick has never concerned it ſelf what his Salary or Allowance from his Principal is, whether it be greater or leſs.

And as the Perſon who is put into a very beneficial Office, ſuch as one of theſe, for his Life, has not any antecedent Right to the Office, and therefore not to the Profits ariſing thereby; and he that prefers him is not bound to give it him; therefore when he puts him into it, he in effect grants him all the Profits of the Office for his Life: And if the Officer make him a Preſent for it, either unexpected, by way of Thanks after he is put in; or expected, which he had told him of before; or give it at the Time, or before that he is admitted; I ſee not any Immorality either in the Giver or Taker. It is Money given for Profits to be received during Life.

The Publick is concerned only in the Goodneſs of the Officer, not how advantageous to him the Grant of the Office is, nor in the Inducement which he that appointed him had to put him in; whether Friendſhip, Acquaintance, Relation, Importunity, great Recommendation, or a Preſent.

I agree, that a Perſon taking a Preſent and putting in an unfit Perſon, when he knew him to be ſo, or had juſt Ground to believe him ſo, is criminal: Not becauſe he has taken a Preſent, but becauſe he has prejudiced the Publick knowingly: It may be an Aggravation, that he had taken Money; but the Crime is, the Wrong done to the Publick in the Perſon advanced. It had been the ſame Crime, had he done it for the ſake of Kindred, or Friendſhip, or for Recommendation, or any other Reaſon.

But if a Perſon very well qualified be placed in an Office, and the Publick has all the Advantage from him that it can have from an Officer in that Poſt, and ſo I who placed him, have well diſcharged my Duty to the Publick; is it material how well I loved him, how nearly he is related, who it was that perſuaded me to prefer him, or what he gave me on that Account, whether before, or after he was put in? Will any of theſe Circumſtances make me criminal in an Action by which I ſerved the Publick well? If the Publick have all the Benefit it can have; where is the Immorality? where is the Crime, if I have an Advantage too? Eſpecially if Uſage has in ſome ſort annexed that Advantage to my Office, which is taken from his?

Obj. I know it may be objected with great Appearance of Reaſon, that this Practice is dangerous, it leads to Inconveniences, it is a Temptation to him that diſpoſes of Places to make ill Officers, and a Temptation to the Officers to extort Money and abuſe the Subjects, in order to get up their Money again.

Anſ. But is it therefore a Crime, where the Temptation is reſiſted, and a very good Officer is put in, and he behaves himſelf perfectly well?

The Point of the Charge now under Conſideration reſts ſingly on this, that I took Money for admitting Mr. *Francis Elde* (for inſtance); and tho' taking Money is a dangerous Practice, and may be a Temptation to let in an ill Man, is it therefore a Crime to put in *Francis Elde*, who is not alledged to be an ill Man or any way unfit, and is really an excellent Maſter?

This Argument concludes, only that the allowing it to be generally practiſed is inconvenient, and may in the Deliberations of the Legiſlature be properly uſed to prove it fit to be reſtrained by a Law: But is not of force, in a Court of Juſtice, to prove it to be a Crime in every inſtance, becauſe it may occaſion a Crime in ſome.

Farther as to the Matter of Temptation to put in one unfit:

The Liberty of preferring Relations to Offices is a Temptation to put in Perſons unfit; and without doubt has often prevailed. Suppoſing therefore it might be proper matter of Deliberation in the Legiſlature, how far a Reſtraint ſhould be put upon it; yet in the mean time, is advancing a Relation to an Office which he is fit for a Crime, becauſe in other Inſtances it has occaſioned a Crime, or may do ſo, or is a Temptation to it? And would it be a ſufficient Charge of a high Crime againſt me, to ſay that I *illegally* and *corruptly* put into ſuch an Office *A. B.* my Son or my Brother? I apprehend not.

Till a Reſtraint is laid, the Thing may be innocently done.

If a Reſtraint be laid, the Law will operate upon it, ſo far as the Reſtraint extends; but farther than that, and the Conſequences declared to enſue thereupon, it will remain as before.

Conſidering this therefore in it ſelf, and upon the Reaſon of the Thing, where is the force of the Argument? You took 5000 *l.* for putting in Mr. *Elde*, or Mr. *Thurſton*, a very fit Perſon and an excellent Maſter, and therefore you are criminal, becauſe ſome body elſe at another Time may put in another Maſter not fit, upon his giving a Preſent.

If this then be not criminal in it ſelf, how do they prove it to be ſo by the Common Law?

The only Caſe they have inſtanced as any Authority for that Purpoſe, is that of *Stockwith* and *North* in *Moor*'s Reports.

But here give me leave to ſay, that it was proper and juſt for the learned Managers to produce, in making out their Charge, all their Arguments on this head of the Illegality of this Practice, that there might be a proper Opportunity of weighing them, and giving them a ſatisfactory Anſwer (if it could be done) at this Time of my Defence, and I preſume they have done ſo. But if they ſhould think fit to reſerve any freſh Argument for their Reply, which we ſhall apprehend may want an Anſwer, your Lordſhips will in that Caſe, give me leave to inſiſt upon a Right of taking proper Notice of it afterwards, and not let them reap any

Benefit by lying by in ſuch an unpreſidented manner, and expecting your Lordſhips Judgment, without hearing the other Side upon it.

The only Caſe, I ſay, which they have inſtanced in, is the Caſe of *Stockwith* and *North* in *Moor's* Reports 781; I have looked upon the Caſe as it is in that Book, and it appears to be thus:

" *North* was fined in the Star-Chamber, for that " he being Sheriff of *Nottingham* in the 43*d* Year " of Queen *Elizabeth*, took Money for the Goaler-" ſhip and Bailiwick for that Year; he gave them " firſt to his Servants who ſold them, but he him-" ſelf received the Money. And this was adjudg-" ed to be letting to Farm of his County, contrary " to the Statute of 4 *Hen.* IV. *cap.* 5. Yet there " note, that the Statute itſelf gives a Penalty cer-" tain and pecuniary, and is *malum prohibitum, non* " *in ſe*. But the Court took it, that in as much as " Corruption follows upon the Covetouſneſs of Of-" ficers, and they are forced thereto by the Prices " which they give for Things which ought not to " be ſold; that this putting to Farm and ſelling of " Offices is *malum in ſe*, and finable".

It appears here, that this was a Proſecution upon the Statute of 4 *Hen.* IV. for the Point adjudged was, that this was contrary to that Statute, and therefore whether what was done, was againſt the Common Law, or *malum in ſe*, or not, was not at all in Judgment before the Court.

And the mention of that is introduced as ſpoke to remove a Doubt, how *North* came to be fined, when a particular Penalty is (as it is there ſaid) given by the Act of Parliament.

But that is a groſs Miſtake in the Reporter, the Act of Parliament is very ſhort, I deſire it may be read.

It was read as follows.

" *Stat.* 4 *Hen.* 4. *cap.* 5. Every Sheriff ſhall abide " in proper Perſon in his Bailiwick for the Time " that he ſhall be ſuch Officer, and that he ſhall " not let the Bailiwick to farm to any Man, for the " Time he occupieth ſuch Office; and that the " ſaid Sheriff be ſworn from time to time to do " the ſame in eſpecial, amongſt other Articles " comprized in the Oath of Sheriff."

Your Lordſhips obſerve, that there is in this Act only a *prohibitory Clauſe* againſt the diſpoſal of ſuch Bailiwick, but no pecuniary or other particular Penalty of any kind, inflicted by that Statute: So that it could not be a queſtion whether a Fine was proper, as that Reporter ſuppoſes.

The Exactneſs of the Report therefore is not to be rely'd upon, and what other Miſtakes may be in it, I know not. Indeed it is a poſthumous Work, uncorrect Notes taken for his own uſe, and not intended to be publiſhed.

But however, taking it for Truth, that ſome of the Judges did ſpeak to the effect in that Report: It is a common Obſervation, that when Judges are proceeding in the Caſe of a plain and expreſs Law, Words uſed by them that tend to diſcountenance and farther expoſe the Crime then cenſured, are of no great Authority.

The very ſame thing is done in Lord Chief Juſtice *Coke's* 12*th* Report, with reſpect to turning arable Land into Paſture; againſt which there was then an Act of Parliament in being; and farther to diſcountenance it, it is there ſaid to be *malum in ſe*.

And in many Places, Uſury is ſaid to be *malum in ſe*, and with greater Colour; and yet I believe a Proſecution for it, would ſcarce be thought maintainable, farther than the Act of Parliament will juſtify it.

But as to this particular Matter of a Sheriff letting his Bailiwick to farm, before it was ſpecially reſtrained by Acts of Parliament for that Purpoſe, there are many Footſteps of its being an ancient and allowed Practice.

The Stat. *de antiquis Raſt. Sheriffs* 5. containing ſeveral Proviſions about Sheriffs, directs, that " that Statute ſhall extend as well to thoſe which " were Sheriffs and other Miniſters, that let to " leaſe their Bailiwicks as to Sheriffs and other " Miniſters which hold their Bailiwicks, them-" ſelves."

Where the Sheriffs holding their Bailiwicks themſelves, or letting them to Leaſe, which is letting them to Farm, is ſpoken of as perfectly indifferent.

Nor is the Expreſſion ſuppoſed to be uſed in *Moor*, pretended to be built on any precedent Authority or Fact, but is barely the Reaſoning of whoever he was that uſed it, from the Temptation to which Officers that pay Money are expoſed; and how juſt it is, I ſubmit upon what I have laid before your Lordſhips on that Subject. Tho' the Danger from that Temptation is much greater in the Caſe of Bailiffs and Sheriffs that have only ignorant People to deal with in remote Parts in the Country, where it is difficult and chargeable to obtain Redreſs, than in the Caſe of Maſters in Chancery, that act under the View almoſt of a Court of Juſtice, and where Perſons wronged have an eaſy Opportunity every Day to obtain Redreſs.

So that this looſe Expreſſion mentioned by *Moor*, (coupled too with a groſs Miſtake) not at all to the Point of Judgment, is of very little force to prove the Caſe to which it is applyed to be againſt the Common Law, and of leſs to prove the preſent Caſe to be ſo.

What then is there farther offered? Do they ſhew that by the Common Cuſtom of *England*, which is properly the Common Law of *England*, the taking Money for Offices, has been from time to time puniſhed, or condemned as criminal?

No, it is admitted on the one hand, that there is not one inſtance of its having been puniſhed or condemned as criminal, at the Common Law:

And on the other hand, it is notorious, that in fact the greateſt Offices have anciently been ſold even by the Kings: And that not in a clandeſtine Manner, but ſo that the Price and what it was paid for, have been entred upon Record.

The Inſtances have ſome of them been mentioned.

Richard the Son of *Alured* in the 5*th* of King *Stephen*, was to pay fifteen Marks that he might ſit with *Ralph Baſſet* for the Pleas of the King, which *Ralph Baſſet* was then Juſticier.

And *Walter de Grey* in the ſeventh of King *John* gave the King 5000 Marks to have the King's Chancery for his Life, and the Biſhop of *Norwich* ingages for the Payment.

I have the Copies of both the Records here in my Hand, if there be any doubt of them.

Nor

Nor are our Hiſtories quite ſilent. In *Hollinſhead*, in the fifth Year of *Richard* the Firſt (who was one of the intermediate Kings between the two Kings I have named) it appears what was done, almoſt with the Sanction of Parliament, certainly with their Notice, and not with their Diſlike.

" The King (ſays the Hiſtorian) called a Par-
" liament at *Nottingham*, and the firſt day of their
" Seſſion *Gerard de Camville* was diſcharged of the
" Office of Sheriff of *Lincoln*, and diſpoſſeſſed
" both of the Caſtle and County. And ſo was
" likewiſe *Hugh Bardolf* of the County and Caſtle
" of *York*, and of the Caſtle of *Scarborough*, and
" of the Cuſtody and Keeping of the County of
" *Weſtmoreland* The which Offices (as he goes
" on) being now in the King's Hands, he ſet
" them on Sale to him which would give moſt.
" Hereof it came to paſs, that where the Lord
" Chancellor offered to give fifteeen hundred
" Marks before hand for the Counties of *York*,
" *Lincoln* and *Northampton*, and one hundred
" Marks of increaſe of Rent for every of the
" ſame Counties; *Geffery* Archbiſhop of *York* of-
" fered to the King three thouſand Marks afore-
" hand only for the County of *York*, and one
" thouſand Marks yearly of Increaſe, and ſo had
" the ſame committed to his Regiment.

And in the Caſe of *Magdalen College*, in the fifteenth of King *James* I. reported in 1 *Rolle's* Reports 157, Sir *Henry Hobart* then Attorney General, and ſoon after Lord Chief Juſtice of the Common Pleas, argues from it, as a Principle not to be conteſted, That if any one procure an Office to himſelf for 1000 *l.* of the Gift of the King, the Office is not loſt by the Statute of 5 *&* 6 *Ed.* 6. which ſhews the thing not wicked, not *malum in ſe*, or againſt the Common Law, for the Prerogative cannot extend to what is ſo.

My Lords,

Whoever makes the Grant, or receives the Money, the King or a Subject, the Temptation under which the Officer who paid it lyes to reimburſe himſelf, is the ſame. And if the Strength of that Temptation make the thing criminal, it will make it ſo in all Inſtances.

It has been taken notice of by thoſe Gentlemen who are of Council for me, that the Proviſoes in the very Statute of 5 *&* 6 *Ed.* 6. prove, that this is not againſt the common Law, or criminal in itſelf, at the ſame time that it puts a particular Reſtraint upon the Practice of buying and ſelling Offices, or Deputations to Offices.

Give me leave to add ſome Obſervations upon the Proviſoes in that Statute.

Sect. IV. contains a Proviſo, that this Act ſhall not extend to any Office whereof any Perſon is ſeized of any Eſtate of Inheritance.

Suppoſe a Man that has an Office of Inheritance takes Money from a Perſon whom he appoints as his Deputy;

Is not that Deputy as lyable to be tempted to reimburſe himſelf by Extortion or Corruption, as if his Principal had but an Eſtate for Life?

Can a Deputy's Behaviour turn upon the Title of his Principal? So that 1000 *l.* (for inſtance) paid by him, will certainly make him corrupt, if his Principal holds his Office for Life, but will not make him guilty of the leaſt Misbehaviour, if his Principal have the Inheritance of the Office?

This Proviſo is therefore plainly founded only upon the Regard the Law-makers had to the *Property* and *Intereſt* of ſuch Owner of an Office, which they would not prejudice, and therefore he is left at full Liberty to ſell the Office itſelf, or a Deputation to it.

But if to take Money from a Perſon who is to have or execute an Office, were unlawful by the Common Law, or wicked in itſelf; it is impoſſible that the Owner of the Office could have a *Right to that wicked or unlawful Gain*; nor could the Law makers have any regard to it.

And ſince here they are *careful* not to take it from him, they allow it. They in effect make a formal *Declaration* that it is *lawful*, and that the Proviſion made by that Act is not ſo neceſſary, as that it ſhould in any degree interfere with his private Property in that Inſtance.

Farther,

Sect. III. makes void all Agreements, Bonds and Promiſes for Money, for any Office or Deputation. But Sect. VI. provides, that the Act ſhall not extend to Agreements, Bonds, *&c.* made or concluded before the firſt of *March* then next.

This ſuppoſes it the Practice at that Time, not only to give and take Money for Offices, but to make formal Contracts for that Purpoſe, which the Courts of Juſtice were to compel the Performance of.

Does it condemn them as criminal in themſelves, by reaſon of the Danger?

No: on the contrary it does not eſteem the Danger ſo great, as that to avoid it the Property ariſing upon theſe Contracts ſhould be taken away, or at all impeached: but leaves a Remedy in a Court of Juſtice to enforce the Performance of a Contract, which muſt neceſſarily cauſe a publick Miſchief, if that were true that it is unlawful in itſelf, and that its Unlawfulneſs ariſes from the Miſchiefs conſequent upon paying Money on that Occaſion.

Had the Makers of that Law been of the Opinion which theſe Gentlemen ſeem to be of, and thought ſuch Traffick a Wickedneſs, it had been impoſſible for them not to have put a Stop to it, and abſolutely diſannulled all Securities and Cautions for the Performance.

I do not ſuppoſe the Form of Expreſſion uſed in this Proviſo will be criticiſed upon, or that it will be urged that the Words of this Proviſo only import, that thoſe Bonds are left *in ſuch Force as they would have been, if the Act had not been made*, and does not make them good.

That would be a poor Subterfuge. The Proviſo makes them not good, 'tis true. Why? Becauſe it plainly ſuppoſes them to be good before; but that Sect. III. would make them void, if this Proviſo did not prevent it; and this Proviſo is on purpoſe to prevent it, and for nothing elſe.

And would the Makers of a Law, would theſe Gentlemen in making a Law, inſert a Proviſo that Agreements ſhould continue of ſuch Force as they were before, if they thought them of no Force before? Nay if they thought them not only void, but miſchievous?

The ſaving a Right of Action upon ſuch Bonds, and making a Proviſo in Favour of them gives them ſuch Countenance, that thoſe that had any ſuch would certainly inſiſt upon them, and the Perſons

Perſons that were bound would be diſcouraged from diſputing with them what the Legiſlature did not think fit to deprive them of, and would therefore pay without ſtanding a Suit.

There is yet one Proviſo more in this Act, material to the preſent Purpoſe.

Sect. VII. provides, that this Act ſhall not *extend or be prejudicial to the Lords Chief Juſtices* or *Judges of Aſſize* —— " but *that they may do in* " *every behalf touching any Office to be given or* " *granted by them, as they might have done before* " *the making of this Act; any thing above mention-* " *ed to the contrary thereof in any wiſe notwith-* " *ſtanding.*

This plainly implies, that at that time, and before, it was the Practice for the two Chief Juſtices and Judges of Aſſize to take Money for the Offices in their Courts, elſe nothing in this Act could extend to what they *uſually did*, or be of *any Prejudice to them.*

And it ſhews too, that the Law-makers did not diſlike the Practice.

I beg leave to ſubmit to your Lordſhips, whether this doth not amount to a Declaration of the Law, that the taking Money for Offices, whatever Danger there may be from it in ſome Caſes, does not neceſſarily in all Caſes, cauſe bad Officers to be made; nor the paying it make the Officer extort: For the Nature of Things changes not with the Titles of Perſons. An Officer that pays Money to a Lord Chief Juſtice, will be under the ſame Temptation to get it up again, as he that pays to a Lord Chancellor.

As to the Wording and Form of Expreſſion of this Proviſo, I take it to be very clear, that the Words [*as they might have done before the making of this Act*] are declaratory; that they might before the making of this Act take Money for Offices; and becauſe in the Caſe of thoſe Officers the Danger was not ſo great, it is ſtill ſaved and preſerved to them.

If it be ſaid that nothing is ſaved to them but *the doing what they might have done before*, and that they *could not before lawfully take Money for Offices*; I beg leave to anſwer, that if that be ſo, the Clauſe is perfectly frivolous. A ſtrong Prejudice againſt the Expoſition that makes it ſo in all Caſes, but much more ſo here.

For as the Judges are always Attendants in this Houſe, and this Clauſe greatly concerns them; it is highly probable that it was drawn up and propoſed by themſelves.

And if taking Money for Offices were then eſteemed criminal; if the Notion is right which is now contended for, that taking Money for Offices was againſt Law, was Corruption; and that this Law was then paſſing to lay farther particular Reſtraints upon it; Is it poſſible that the Judges could preſume to ask not to have a Difficulty or Diſcouragement laid upon their being guilty of Corruption, or their doing a thing unlawful?

Or is it poſſible that the Lords and Commons ſhould conſent to it?

Or if the Judges would ask it, would they not have made it effectual? Would they, by propoſing the Proviſo, in effect, own a corrupt Practice, and their Reſolution to continue it, ask Proviſion for it, and be indulged; and yet not ask what would effectually juſtify them in it?

I hope therefore that what is charged againſt me is not condemned by the Common Law or Uſage of this Kingdom. If it be, it properly lay on them to make it out; but they have ſhewn nothing to prove it; not one Inſtance of its being puniſhed at Common Law, or blamed; not one Citation out of the old Books of the Common Law, precedent to the Acts of Parliament made relating to Things of that Kind. On the contrary, I have ſhewn it practiſed in the higheſt Inſtances, without Blame or Cenſure: And that ſeveral Clauſes in the Statute of *E. 6.* were plainly founded upon a Suppoſition of this Practice being allowed by the Common Law, and continue the Allowance of it, in ſome Inſtances, to this Day.

This is what I had humbly to lay before your Lordſhips, with reſpect to the Common Law. And I ſhall now conſider it as it ſtands upon the Acts of Parliament.

And as to Acts of Parliament relating to this Matter, they have ſuggeſted only two, the Statute 12 *Ric.* 2. *cap.* 2. and the Statute 5 & 6 *Ed. 6. cap. 16.*

As to the Statute of 12 *Rich.* 2. The Proviſion of this Statute is to bind thoſe who make or name Officers in the Caſes to which it extends, under an Oath to obſerve the Directions of that Statute in their ſo doing. And I hope I have already fully anſwered the Pretence of my having taken an Oath upon this Statute, which extends to any of the Officers in the Court of Chancery, I ſhall now conſider that Statute, and what may be urged from it, a little more particularly. And,

1. As I have already mentioned, I take the Statute of 12 *Rich.* 2. to relate only to ſuch Nominations as are in nature of Elections; that is, ſuch where the Nomination is in ſeveral Perſons.

In thoſe Caſes it is common with us to have ſuch Oaths adminiſtred, but not in others. We find them in Colleges, and other Bodies of Men.

The great Uſe and main Intent of ſuch an Oath in thoſe Caſes is, to prevent Combinations, Strife, and Brigues, where the ſeveral Perſons concerned will naturally have ſeveral Views. And the Animoſities and Contentions ariſing thence among ſo great Officers as this Statute takes Care of, might greatly affect the publick Peace.

The Things which cauſe moſt Contentions on ſuch Occaſions, are *Money*, *Affection*, (by reaſon of Kindred or Friendſhip) and *great Solicitations.*

Accordingly this Act extends to all three, and takes Care to forbid the laſt *(Solicitation)* wholly; and the being influenced by either of the former.

The Perſons *called* to name, or make Juſtices of the Peace, Sheriffs, or any other Officer or Miniſter of the King, are *to be ſworn, that they neither name nor make them for any manner of Gift or Brocage, Favour or Affection; nor any that purſues by himſelf, or any other, privately or openly to be in any manner of Office, be put in that ſame Office, or any other; but that they make all ſuch Officers and Miniſters of the moſt good and lawful, and the moſt ſufficient to their Knowledge and their Conſcience.*

My Lords, in the next place,

2. The Words of the Statute plainly import as much; that the Nomination there meant, is what is made by ſeveral Perſons when they are called together.

" It

" It is accorded and aſſented, that the Chan-
" cellor, Treaſurer, Keeper of the Privy Seal,
" Steward of the King's Houſe, Chamberlain of
" the King, Clerk of the Rolls, Juſtices of the
" one Bench and of the other, Barons of the Ex-
" chequer, and all others who ſhall be called to
" name or make Juſtices of the Peace, Sheriffs,
" Eſcheators, Cuſtomers, Comptrollers, or any
" other Officer or Miniſter of the King, ſhall be
" firmly ſworn that they neither name nor make
" Juſtices of Peace, Sheriff, Eſcheator, Cuſto-
" mer, Comptroller, or any other Miniſter of the
" King, *&c.* for Gift or Brokage, Favour or Af-
" fection, *&c.*

I own, that there ſeems ſome Difficulty as to this, becauſe I do not know of any Law, at that time, that any of theſe Officers, except Sheriffs, were named by an Aſſembly of ſeveral Perſons.

But though there were no Law requiring it, there might be an Uſage to do it, by ſome Direction from the Crown for better Information.

And what is now done in relation to Sheriffs, turns in ſome part upon ſuch Uſage continued down to this Time, without any Law, that I could ever hear of, for to ſupport it, as to *all* the Perſons who now meet to name them.

For by a Statute of 9 *Ed.* 2. called the Statute of Sheriffs, printed in *Raſt.* Tit. Sheriffs 2. " She-
" riffs are to be aſſigned by the Chancellor, Trea-
" ſurer, Barons of the Exchequer, and by the Ju-
" ſtices.

By 14 *Ed.* 3. *cap.* 7. *Raſt.* 12.

" *Sheriffs ſhall be ordained by the Chancellor, Trea-*
" *ſurer and Chief Baron of the Exchequer, taking to*
" *them the Chief Juſtices of the one Bench and of the*
" *other, if they be preſent: And in the Abſence of*
" *the Chancellor, by the Treaſurer, the Barons of the*
" *Exchequer and the Juſtices. And that ſhall be done*
" *yearly on the Morrow of* All Souls (that is the
" third of *November) in the Exchequer.*

This is the Statute that fixes the Time and Place now obſerved.

But as to the Perſons, though the Juſtices of both Benches are in the firſt Act, yet none of them, but the Chief Juſtices are in the laſt. And the Lord Privy Seal, Lord Steward, Lord Chamberlain, and the Clerk of the Rolls, and other Lords of the Council, are in neither. And yet by conſtant Uſage, all theſe attend at the naming of Sheriffs; and, as they ſee occaſion, give their Advice and Aſſiſtance, and all take the Oath.

And by like Uſage, which we cannot now account for, there was probably ſome ſuch Practice with reſpect to other Offices.

For it is to make the Statute abſurd, which provides that ſuch and ſuch, and all *others that ſhall be called to name Juſtices of the Peace, Sheriffs, Eſcheators,* &c. *ſhall be ſworn to name theſe Officers without Favour or Affection,* if neither they nor any others were called to name any of theſe Officers.

3. This is the ſtronger, becauſe conſtant Practice, the beſt Expoſitor, has thus expounded this Statute.

If the Intention of this Statute were, that all the Particulars firſt named, that is, Chancellor, Treaſurer, Keeper of the Privy Seal, Steward of the King's Houſe, Chamberlain of the King, *&c.* were to be ſeparately ſworn, as to the reſpective Officers under each of them ſeverally;

Then this muſt have been made part of their Oath of Office, or adminiſtred at the ſame time with it, though in a diſtinct Oath.

But that has never been done, nor has it ever been adminiſtred to a ſingle Perſon at that or any other Time. Which is the ſtrongeſt Argument poſſible that it is not what was then meant, or ever underſtood to be meant, by that Statute. But on the contrary, in the ſingle Inſtance where ſeveral are called together to name Officers, that is in the caſe of Sheriffs, the ſwearing of them, to obſerve this Statute on that Occaſion, is never omitted to this Day.

Give me leave to obſerve one thing more, that a Chancellor, a Treaſurer may poſſibly be ſeven Years in his Office; I believe Treaſurers have in fact been all or the greateſt part of their Time without ever taking this Oath, which is never taken, unleſs they happen to aſſiſt at the naming of Sheriffs, which there is no Law requiring the other great Officers to attend at, and which is now become little more than a matter of Form, the Liſt ſettled in that Aſſembly being every Year departed from in many Counties.

And if this that I have thus offered be the whole Meaning of the Statute; then at this Day, as the Uſage now is, it has nothing to operate upon but the Nomination of Sheriffs, and therefore extends to no other Caſes, and conſequently not to any of the Officers in the Court of Chancery.

But may it not be ſaid, that though the Oath required by this Statute extend not to the preſent Caſe, yet will not this Proviſion amount to a Declaration of the Senſe of the Law-makers, that the Things thus provided againſt are ſuch as ſhould not be done, and conſequently that the doing of them after ſuch Statute will be againſt Law?

To ſtate this diſtinctly, would take up more Time than is proper upon this Occaſion.

But this I beg leave to ſay, and it will be as well applicable to the Statute of *E.* 6. as to this, and perhaps more directly.

Acts of Parliament that contain political Proviſions for making Regulations, or for avoiding Things not wicked, but which may be inconvenient, have not always this Conſequence, that Actions done contrary to what they deſigned in the very Caſes then in view will be criminal, and much leſs in Caſes not in view.

Our Law is ſparing, in making the doing a thing a Crime, which may be rectified and redreſſed another way.

There are ſeveral Acts of Parliament to reſtrain Eccleſiaſtical Perſons from making long Leaſes, to prevent the Inconveniencies ſuch Leaſes may bring upon their Succeſſors; thoſe Acts declare ſuch Leaſes void, which therefore are againſt the Intent of thoſe Laws; but it was never thought that the making or accepting ſuch Leaſes was criminal.

The Senſe of the Law-makers is to have no Conſequence, but what neceſſary follows from the Proviſion by them made.

What they intended was, that the Succeſſor, if he pleaſed, might ſet them aſide; which would have this Effect, that none would take ſuch Leaſes, or they would do it on Terms advantagious to the Succeſſor, or with a Reſolution of being ſo good Tenants, as that the Succeſſor would not take Advantage of it: So that either the Leaſe would be vacated, or the Inconvenience would be prevented without, which fully anſwers

the End of the Act. And this is very applicable to the Statute of *Ed. 6.*

In this Act of *Ric.* 2. the Inconvenience provided againſt is only in Elections or Nominations by Numbers; the Proviſion is by taking an Oath.

If ſuch Oath be taken and broke, that is a Crime; for that is the neceſſary Conſequence of the Proviſion made, Violation of an Oath being undoubtedly criminal. But where no Oath is taken, much more where none is required, I do not ſee how doing the thing can be a Crime; merely becauſe in ſome Caſes it is in this manner provided againſt, and would be criminal if in doing it an Oath had been violated.

One thing intended to be entirely prevented in Caſes within this Statute is Solicitation, or deſiring a Place.

But has it ever been conſtrued, in conſequence of this Proviſion, that if I put a Perſon into an Office, who ever asked that or any other, I ſhould be a Criminal, though I never took this Oath?

Then the Conſequence will be, that the asking a Place, or the modeſt offering a Man's ſelf for it, (which would be ſuing or purſuing for it in the Words of the Act), will lay him under a perpetual Diſability of having that Place, or any other.

Nay, ſince asking a Place is what the Statute has made a Proviſion to prevent; whoever asks a Place, does a thing intended to be prohibited by the Statute, and is therefore criminal.

Was this ever the Conſtruction of this Act?

Nay, every one that aſſiſts in what was thus intended to be prevented will be criminal, and ſo will every one that asks for another, at his Requeſt.

My Lords, at this rate the Statute will be very extenſive.

I would beg leave to mention one Caſe more, and hope the Gentlemen of the Houſe of Commons will not take it amiſs, or look upon it as any Diſreſpect to them.

By the Statute 1 *Hen.* 5. *cap.* 1. " *It is enacted,* " *That Knights of Shires be not* choſen *unleſs* they " *be reſident* within the Shire where they ſhall be " choſen, the Day of the Date of the Writ of " Summons. *And that the Citizens and Burgeſſes* " *of the Cities and Boroughs be choſen Men, Citizens* " *and Burgeſſes*, reſiant, *dwelling and free in the* " *ſame Cities and Boroughs, and* no other *in any* " *wiſe.*

The Statute 23 *H. 6. cap.* 15. recites this laſt part of that Statute, and enacts, that it be *duly kept in all Points.*

And this is the Statute upon which Actions uſed to be brought, in our time, for falſe Returns of Members to Parliament.

This is in direct Words a *Prohibition* of any Perſons being *choſen* that is *not reſiant:* But ſince the natural Effect of this Proviſion would be, that (the ſubject Matter thereof being the Caſe of a legal Authority conferred by the Choice) Perſons choſen, not being ſo qualified, might in conſequence of this Law be rejected.

If this political Proviſion be not complied with, is there another Conſequence to follow, inſtead of redreſſing it this way, and the Parties concerned to be therefore made criminal?

Is it criminal in thoſe who chuſe for their Repreſentatives in Parliament, Perſons not only not *reſiant*, but whom they never ſaw?

Is it criminal in thoſe unqualified Perſons, to preſume to take their Places in the Houſe?

Is it criminal in the other Members, knowing ſuch to be amongſt them, not to turn them out *ex officio*, even though no Complaint be made from without Doors?

I think not.

Yet I apprehend that will be the Conſequence, if Laws of that Nature are thus to be explained, and every Action is to be judged criminal, which any Act of Parliament has made any ſort of Proviſion to prevent.

As to the Statute of 5 & 6 *Ed. 6. cap.* 16.

Although it has made Proviſion againſt the Sale or Diſpoſal of Offices for Money, yet nothing can be inferred from thence in Support of this Proſecution.

But that your Lordſhips may take a better View of that Law, permit me to lay before you a few Obſervations.

The Preamble ſets forth the End for which this Reſtraint was laid.

" *For* the avoiding of *Corruption* which *may here-*
" *after* happen to be *in the Officers and Miniſters* in
" thoſe Courts, and Places, and Rooms, wherein
" there is requiſite to be had the true Adminiſtra-
" tion of Juſtice, or Services of Truſt:
" And to *the Intent* that *Perſons worthy* and meet
" to be advanced to the Place where Juſtice is to
" be adminiſtred, or any Service of Truſt execut-
" ed, ſhould hereafter *be preferred* to the ſame,
" and *no other.*

Here is Mention made of *Corruption*, but it is that which may happen *in the Officers appointed*, it *calls not* the *taking Money* upon the appointing them *Corruption.*

It in effect ſays, what I have before ſaid.

That giving and taking Money is a *Temptation* to thoſe who diſpoſe Offices, to put in ſometimes unfit Perſons, to thoſe who buy to extort and be corrupt: And conſequently that if this Practice continue, there will be Inſtances, in which this Temptation will ſo far be yielded to, that Perſons not worthy will *ſometimes* be preferred, and thoſe Perſons will *ſome of them* venture upon being guilty of Corruption.

But to avoid all the *Corruption which may happen* in thoſe Inſtances, and to the intent that this *Temptation* may in no *caſe prevent*, but that *worthy Perſons be advanced, and no other in any* Inſtance, the Statute is made.

The *main End* whereof is *anſwered*, if worthy Perſons be advanced, and they be not corrupt, but behave themſelves well.

What then is the particular Proviſion made by this Statute? *Not* making way for an arbitrary Puniſhment, by *declaring it to be Corruption*, or *criminal*, or *againſt* the Proviſion of *any former Law*, to give or take Money for an Office.

Not declaring that it *ſhall be criminal* for the future.

Not even enacting, that *no Perſon ſhall* take or give Money for an Office: which might make the Contravention of this Law, a Crime for the future.

For it is *remarkable*, that this Statute has not ſo much as any *prohibitory Words* in it.

But the whole Proviſion is barely *putting the Caſe* by way of *Suppoſition*, " *if a Perſon do take Money*," &c.

and declaring the *Conſequence*, which Conſequence is, that the *Perſon taking* the Money, if it were for an Office, *ſhall loſe the Nomination to that Office*; if for a Deputation, he ſhall loſe his Intereſt in the Office: And the *Perſon paying* ſhall be adjudged *a diſabled Perſon* to have, occupy, or *enjoy the Office* or Deputation. That is, as appears afterwards, he is *diſabled, ſo far as concerns himſelf*, his right to have it, and to *continue the taking of the Profits*: But not ſo far as the *Publick has benefit* by him: For by a Proviſo for that Purpoſe, all *Acts done by him are valid*.

The Effect of which is, that the Officer who comes in for Money holds that Office *precariouſly*, which would otherwiſe have been *for Life*, and is *wholly at Mercy*, if he gives the leaſt *Occaſion of Complaint* againſt him; and ſince he that put him in has loſt the Nomination, there accrues to the King a Right to fill the Place with a better Man in caſe he thinks fit.

And therefore I will not controvert, but that the Right or Power of Nomination to an Office may, by a Proſecution grounded upon this Statute, be taken from the Perſon who enjoyed it, and veſted in the Crown.

But as there is no *ſuch Power of Nomination* to theſe Offices *now in me*; but I *have loſt* it *with the Office of Chancellor*, and therein have ſuffered a *much greater* Loſs than that of theſe *Nominations* only; No *Judgment can be given againſt me upon this* Act, and therefore neither can there be founded upon it any Proſecution againſt me; for that is but a Method of praying and obtaining a proper Judgment.

And to adjudge, that upon the Caſe which has happen'd, (ſuppoſing it to be within the Words and Meaning of this Statute) any *Puniſhment* ſhall be inflicted, or any *Conſequence* follow, beyond the *Loſs of the Nomination*, is (with great Submiſſion) to go quite out of this Statute.

Thus I have endeavoured to make out what I firſt propoſed, that the receiving a Preſent upon theſe Occaſions is not criminal in it ſelf, or by the Common Law, and that there is not any Act of Parliament whatſoever by which the ſame is made Criminal, or ſubject to any Puniſhment or Judgment which can be pray'd in this Proſecution.

My Lords,

All this Reaſoning is greatly fortifyed by Uſage, by my Predeceſſors; which Uſage is expreſsly proved before your Lordſhips by all the Maſters, who could not refuſe giving Teſtimony; that is, all the preſent Maſters admitted by my Predeceſſors, who are indemnified by the Act of this Seſſion for that Purpoſe: And, I think, is proved too by the former Maſters now living, who declined giving an Anſwer to the Queſtion, when asked, what they gave or knew given; making this their Excuſe, that by our Law no Man is bound to accuſe himſelf, and that to own they had given Money would expoſe them to the Penalties of this Act. For whatever might be the Conſequence of owning they gave Money; there was no Danger in ſaying they gave none. And they might have given an Anſwer in the Negative ſafely, but that the Truth and their Oath would not allow them to do it.

And this Refuſal of theirs to anſwer, was not a Contrivance of mine, they were ſupported in their Objection by the Gentlemen that are Managers, who were pleaſed to give their Aſſiſtance to defend them from anſwering the Queſtion.

And might I have been allowed to have given Evidence of what has been from time to time declared, by Parties concerned, who are now dead, it would have been proved much farther.

But I apprehend the Thing is notorious; altho' ſome Proofs have been offered for Form-ſake, yet it was equally well known before, known to all the World.

Give me leave likewiſe to argue farther upon this whole Matter from what I ſaid once already, that it is admitted that there is not one Inſtance, that ſuch taking Money has been puniſhed either at Common Law or upon Act of Parliament; that this, according to the Rules of our Law, is one of the ſtrongeſt Arguments that it is not puniſhable. For it is not to be preſumed, but that it has been often done; the Statute of *Edw.* VI. takes notice of the Practice, not only of doing it, but of entering into formal Contracts and Bonds for that Purpoſe.

Littleton, our moſt celebrated Lawyer, upon a Queſtion, whether an Action would lye upon a certain Act of Parliament, reſts upon it as a deciſive Argument in favour of the Negative, that it was never ſeen or heard that any Action was brought upon that Statute; alledging, that if any Action might have been brought for this Matter, it muſt be taken, that at ſome time or other it would have been put in practice. And the Lord Chief Juſtice *Coke*, in his Commentary upon *Littleton*, obſerves, that as Uſage is a good Interpreter of Laws, ſo Non-Uſage, where there is no Example, is a great Intendment (as he calls it) that the Law will not bear it. Not that an Act of Parliament (as he goes on) can by non-uſer loſe its Force; but that it may thereby be expounded, or declared how the Act is to be underſtood.

This is what I have to ſubmit to your Lordſhips, that the taking Money for Offices is not criminal, which, I apprehend, is the whole Charge in the Articles, except the *Manner of taking it* varies the Conſideration, which I ſhall take Notice of afterwards.

There is not the leaſt Pretence, that Money was given for putting in Perſons unqualified, the ſuppoſed Crime is ſingly the taking Money.

And as to what has been ſaid by way of comparing it to the Caſe where any judicial Order or Determination is made for a Bribe; give me leave, with great Submiſſion, to inſiſt upon it, that there is not the leaſt Parity at all betwixt that and the preſent Caſe: For in Matters of Judgment, if the Party have a Right to what he ſues for, he ought not to be put to buy his own; and much leſs, if he has not a Right, ſhould he be at Liberty to purchaſe of the Judge, that which is the Right of another.

But this here is not matter of Juſtice, but matter of Favour and pure Bounty; whether I put in this Man or that Man into a Place in my Diſpoſal, depended wholly upon my own Choice and Pleaſure; ſo that the Caſes are not at all alike.

A Bribe ſtrikes at the Root of the equal Adminiſtration of Juſtice; it is a profeſſed Byaſs, and can mean nothing but to deſtroy Indifferency, and to render the Judgment partial.

It is therefore diſallowed in all Nations, and in all Ages; and is expreſsly forbid by the Law of God. And had the Gentleman who touched upon the Text which condemns Gifts, been pleaſed to cite

cite it at large, it would have appeared to relate to Bribes given in Caſes of Judgment, *Deut.* xv. 18. 19. " *Judges and Officers ſhalt thou make thee in all thy* " *gates* ——— *And they ſhall judge the People with* " *juſt Judgment. Thou ſhalt not wreſt Judgment,* " *thou ſhalt not reſpect Perſons, neither take a Gift.* " *For a Gift doth blind the Eyes of the wiſe.*

As to the manner of taking Money in the ſeveral Articles V, VI, VII, VIII, the Caſe ſtands thus.

V. There are in all, eight Articles relating to this Matter; but they have proceeded only upon four: The firſt of which is the fifth Article, and relates to the Money taken on Mr. *Kinaſton*'s Admittance.

Upon their own Evidence it appears, that Mr. *Kinaſton* was well recommended by Mr. *Bayly*, a Perſon of a very good Character; that the firſt and only Meſſage brought to me, with relation to his Admittance and the Money to be paid, was this; that he deſired to be admitted on the Surrender of Mr. *Rogers*, and would make a Complement of 1500 Guineas, or, if I did not think that enough, I ſhould pleaſe my ſelf; and my Anſwer was, I was pleaſed with the 1500 Guineas, and he was admitted.

It has been endeavoured to make what was then done odious; by repreſenting, that Mr. *Kinaſton* firſt offered 1000 *l.* but Mr. *Cottingham* would not propoſe it; that he was work'd up by Mr. *Cottingham*'s telling him that he had bought a good Office; that Mr. *Rogers* had told him he uſually made 1700 *l.* and ſometimes 2000 *l. per Annum* of it, and that he underſtood the Profits aroſe out of the ordinary Profits of the Office, and the Uſe of the Suitors Money together.

As to the Offer of 1000 *l.* Mr. *Cottingham*, a Witneſs produced by themſelves, denies it. And Mr. *Bayly*, their other Witneſs, who firſt broke the Affair to Mr. *Cottingham*, and at his Return from him, told Mr. *Kinaſton* that Mr. *Cottingham* ſaid 1500 Guineas would be expected, ſwears, that Mr. *Kinaſton* immediately ſubmitted to what Mr. *Cottingham* had ſo mentioned, only he ſaid he thought it had been but 1500 *l.* And this was before Mr. *Kinaſton* ſaw Mr. *Cottingham*.

So that Mr. *Kinaſton*'s Oath is directly contradicted by the Oath of Mr. *Cottingham*, one of their own Witneſſes; and is highly improbable from what Mr. *Bayly* another of their own Witneſſes ſwears.

And as to what Mr. *Cottingham* ſaid about the goodneſs of the Office, he ſwears it was after the 1500 Guineas were agreed to be paid. And indeed upon that depended not ſo much what he was to preſent to me, as what he was to pay to Mr. *Rogers*, which had been agreed upon before Mr. *Cottingham* was ſpoken to.

So that here is nothing but my accepting a Sum of 1500 Guineas, which was propoſed to me as a voluntary Offer, when I was at the ſame time told I might have more, if I would inſiſt upon it; without one aggravating Circumſtance, with relation to the Perſon admitted, or what I did.

VI. The next of theſe Articles is the ſixth, which concerns Mr. *Thomas Bennet*, and the Money given me by him, on account of his being admitted Maſter upon Mr. *Hiccocks*'s Surrender.

And the whole of the Fact, ſo far as I was concerned in it or knew of it, was but this. That Mr. *Cottingham* informed me of a voluntary Offer made by Mr. *Bennet* of 1500 Guineas, which I accepted. I believe he thought himſelf not ill uſed, and I being then extremely ill, he preſſed to be admitted, for fear (as Mr. *Cottingham* ſwears he thought) of falling into worſe Hands. On *Thurſday*, and in the Nights before and after, I remember I loſt near 50 Ounces of Blood, in about 24 Hours. And that Night Dr. *Mead* told Mr. *Cottingham*, that if the Diſtemper had not a Turn very ſoon, I could not live 24 Hours. On *Friday* Mr. *Cottingham* ſays, the Doctor told him the Diſtemper had a Turn: On *Saturday* Morning Mr. *Bennet*, after great importunity, was admitted while I was in Bed, but Company kept out of the Room as much as could be.

This is what they have proved by Mr. *Cottingham*.

Mr. *Bennet*, who mentions nothing at all of me of his own Knowledge, but of the Kindneſs with which I ſpoke to him, and told him that he was admitted by a dying Chancellor, is their other Witneſs, who is to ſhew invidious Circumſtances. And very ſolicitous he ſeems to be to do it.

He takes care to ſay, that he was ordered to come alone, and bring no body with him; as if it were the better to keep ſecret the Payment of the Money, tho' he knew my great Weakneſs was the Reaſon.

He affects to ſay, the Bank-Notes were taken out in feigned Names, and that it was not thought proper to uſe my Name or his. Tho' upon another Article, when he is examined again, it comes out, that the feigned Name was that of his Clerk, whom he ſent to take out the Notes, and it was merely *Bennet*'s own doing.

He ſays, he offered 1000 *l.* to *Cottingham* at firſt, and tells a long Dialogue they had about it, but *Cottingham* himſelf upon his Oath denies it all.

So that here, at laſt, nothing is proved that paſſed with me, but the 1500 Guineas being offered to me and accepted.

And give me leave to obſerve, that the two Sums in theſe two Articles, were certainly not paid out of the Suitors Money. For whatever other Objection may be made againſt taking the Preſent before Admiſſion, it has this Effect, to ſhew that it came not out of the Money of the Suitors.

And yet there being a Pretence (without ſtating the Circumſtance of Time, which I have juſt taken notice of) that they were paid out of that Money, and that the Suitors were in danger of being Sufferers; I brought the Money into Chancery, to be ſubject to the Orders of the Court.

The two other Articles, the ſeventh and eighth, were upon Admiſſions to Places vacant by Death.

VII. The ſeventh Article concerns the Caſe of Mr. *Elde*; and the Fact, as they have themſelves proved, is thus:

Upon the Death of Mr. *Fellows*, the former Maſter, 5000 Guineas is offered and given to me by Mr. *Elde*; 6000 *l.* is offered by another.

It is admitted, that *Thomas Bennet* about three Quarters of a Year before, upon coming into his Place gave his Predeceſſor, who ſurrendred to him ſeven thouſand five hundred Pounds, and to the

the Great Seal 1576 *l.* in all 9075 *l*; and that Mr. *Kinaſton*, two years before him, gave his Predeceſſor 6000 *l.* and to the Great Seal 1575 *l.* in all 7575 *l.*

And Mr. *Elde*, a Man of unblemiſhed Character, of a good Eſtate, and not one Objection to his Fitneſs, is admitted, though he pays ſo very much ſhort of what others had paid, and leſs than was at the ſame time offered.

And of this that he paid, 3400 *l.* was returned to him, and only 1850 *l.* retained.

I will not trouble your Lordſhips in relation to what my private Intentions were in that Tranſaction, if they were capable of being proved, I believe your Lordſhips would not diſlike them.

Some little Reflection has been made upon the Mony being brought in a Basket, as if it were for Privacy, and even to conceal it from Mr. *Cottingham*.

Whereas it plainly appears, to have been without any Deſign, and only Mr. *Elde*'s making uſe of a Convenience he accidentally had in his Chambers.

But if there had been an Intention to conceal it from Mr. *Cottingham*, why was he the Hand to convey any thing? why was he the Perſon to bring up the Basket? Mr. *Cottingham* knew 6000 *l.* had been offered by another, and might rather gueſs this to be more than leſs.

And had Mr. *Elde* not been himſelf examined (which at that time it was not expected he would be) and Mr. *Cottingham* proved, that Mr. *Elde* had told him he would give 5000*l.* for the Place; that another offered 6000 *l*; that he had told me of it; that Mr. *Elde* after delivered him a Basket, which by its weight he believed to have Mony in it; that he brought it to me; and that Mr. *Elde* was that day, or very ſoon after, admitted: According to the Candour of conſtruing my Actions, this would have been ſaid to be a convincing Proof, that there was 6000 *l.* in the Basket, or more: it being impoſſible for the *avaricious temper of the Earl of* Macclesfield, for his *Impotency of Mind*, his *conſtitutional Weakneſs in matter of Mony* not to take the greater Sum.

VIII. The 8th Article concerns the Caſe of Mr. *Thurſton*.

There, upon Mr. *Borrett's* death 6000 *l*, was offered me by another worthy Gentleman, but Mr. *Thurſton* was admitted.

He ſays he gave upon that Occaſion 5000 Guineas, but that all above 2000 *l.* was returned.

My Lords, Since what paſſed relating to that matter is not capable of proof, I will not trouble you with the particulars of it, which might be material.

Mr. *Thurſton* is likewiſe a Perſon unexceptionable, Mr. Baron *Gilbert*, now one of the Lords Commiſſioners for the Cuſtody of the Great Seal, gave me an extraordinary Character of him, and that determined me in his favour.

But there is no Objection to him neither, and therefore there needs no proof.

This is the State of the Fact upon theſe two Articles.

This is ſo far from *Extortion*; the Mony is voluntarily offered.

So far from *Avarice*; the greater Sum is refuſed, and a leſs taken. And even the greateſt part of that returned, 3400 *l.* in the one caſe, and 3250 *l.* in the other.

And the Perſons ſuch, that were I to go through *Weſtminſter-hall*, I cannot eaſily pick out two better Men.

Upon the whole, all that can be pretended to be in my hands now, upon theſe four Articles concerning Mr. *Kinaſton*, Mr. *Tho. Bennett*, Mr. *Elde*, and Mr. *Thurſton*, which are all the Managers have proceeded upon relating to Mony received from the Maſters, is but 3850 *l*; that is 1850 *l.* from Mr. *Elde*, and 2000 *l.* from Mr. *Thurſton*; the reſt having been all returned.

And as to that which was given back to Mr. *Thurſton*; he has ſworn, that he was ſent for ſeveral times, in order to have part of his Mony returned, and received it before the firſt Seal after *Michaelmas*, near a Month before any Order by the Lords of the Council to call for the Accounts, and while every thing was in the ſame State as when he paid it, and from his Evidence, it cannot be judged to be any thing but the effect of Generoſity.

Mr. *Elde's* was not returned till after the Accounts were begun to be taken, he continuing a long time in the Country; but when he came to Town, he had it.

IX. The 9th Article relates to 100 Guineas given me by Mr. *Tho. Bennet*, upon his diſpoſing of his Office of Clerk of the Cuſtodies or Lunaticks to Mr. *Hamerſley*.

The Evidence is quite contrary to the Charge, as it is laid in the Articles, and amounts but to this, That *Bennet* having agreed to diſpoſe of his Office to another, ſent me a Preſent voluntarily of 100 Guineas upon that occaſion, and tho' I, at that time, knew that more had been given in the like caſe, I was contented with that, and accepted it.

This is within the ſame reaſon, as the Caſe of the Maſters; it has been practiſed by my Predeceſſors, as a Right of their Office, upon Diſpoſitions of this Office, and others of the like nature.

Beſides the proof of what had been paid to the Great Seal, upon another diſpoſition of this Office; it has been proved, that another of my Predeceſſors, the late Lord *Cowper*, declared his Opinion, that he thought it his right to have a Preſent: And he having then paſſed a Grant of this very Office, without having had a Preſent, upon the Party's having pretended and aſſured him that it had not been uſual to give any for that Office; he expreſſed great diſſatisfaction, and declared that he thought he had been impoſed on, that he ſaw no reaſon why that Office ſhould not pay as well as others of the like nature. Which implies both the Fact of receiving Gratuities, or Preſents upon Transfers of ſuch Offices, and his claiming a Right to receive them.

As to the diſcourſe Mr. *Bennet* pretends to have had with Mr. *Cottingham*, Mr. *Cottingham* denies it; and as they both are produced by the Managers to this point, this is a claſhing between their own Witneſſes; and that cannot be ſaid to be proved by them, which is affirmed by one of their Witneſſes, and poſitively denied by the other.

And if there had been any ſuch Diſcourſe, it is not brought home to affect me; for there is no pretence that I knew any thing of it.

But as to the whole Fact, wherein they differ, I think from the Character that has been given of Mr. *Cottingham*, and what has appeared of Mr. *Bennet*, it will be no queſtion at all, which of them two ſhould be believed.

X. As to the 10th Article, there is no Evidence given.

XI. The next Article is the 11th. And the Subſtance of it is, *That in order to advance and increaſe the illegal and corrupt Gain ariſing to myſelf from the Sale and Diſpoſal of the Offices of the Maſters of the Court of Chancery, in violation of the Truſt repoſed in me for the Care and Protection of the Suitors; I did admit ſeveral Perſons to the ſaid Offices of Maſters, who at the time of their Admiſſions were of ſmall Subſtance and Ability, very unfit to be truſted with the great Sums of Mony and other Effects of the Suitors lodged in their Hands.*

The Maſters are not by this Article charged with the want of any other Qualification whatſoever, but that of Eſtate; nor is there the leaſt Proof, or Pretence, that they were not in all other reſpects, Men of Abilities equal to the Duty to be diſcharged by them, honeſt, and unexceptionable in point of Reputation; but the ſingle Objection to them is, that they were Perſons of a ſmall Subſtance.

The Proof offer'd upon this Article is this:

They have produced 3 Orders made in the Court of Chancery in the Months of *January* and *February* laſt, whereby it appear'd that Mr. *Conway*, Mr. *Kinaſton*, and Mr. *Tho. Bennet* had not at that time brought in all the Mony that appeared to be then in their Hands belonging to the Suitors of the Court. This is their whole Proof.

But I am intirely at a loſs to know, how this can be ſtretched to prove, what Ability they were of at the times of their reſpective Admiſſions, or indeed that they are not of ability now to pay their whole Ballances, merely becauſe on ſuch a particular Day they had not paid their reſpective Ballances into Court.

Nor is there the leaſt Proof that I had any reaſon to ſuſpect their Ability, when I admitted them.

Mr. *Conway* had an Eſtate of between 5 and 6 hundred Pounds *per Annum*.

Mr. *Kinaſton* was repreſented to me as a Man of Subſtance: Now, that he comes under another Article, to ſwear it down, he owns that he has an Eſtate of 4 or 5 hundred Pounds a Year, with Timber upon it worth 2500 *l*; and had likewiſe, at that time, in Mony in the Funds, to the value of two or three thouſand Pounds.

Tho. Bennet was eſteemed a Man of a very good Eſtate and Subſtance. He is the Perſon to ſwear himſelf now worth nothing. And, to do it effectually, he ſticks not at owning, that he has mortgaged part of his Eſtate for more than it is worth. Yet there is upon your Lordſhip's Table, the Particular given in by him to the Court of Chancery, wherein his Eſtate, beſides that which he ſays he purchaſed ſince he was Maſter, appears to be about 500 *l. per ann.* and he owns he had, when he was admitted, a Place for Life of 250 *l. per ann.* which he after diſpoſed of. He ſays he was worth 20000 *l.* and had been ſufficient ſtill, but for the Loſſes in 1720, which he owns were not known to me, nor generally ſuſpected.

But, my Lords, theſe two Gentlemen are making their Circumſtances mean, in order to get back the Mony they paid for their Offices; which they could not do by their own Oaths, directly for their own Uſes: and therefore they have thought fit to keep back ſo much of the Mony of the Suitors, when called upon to bring it in, that ſo the Suitors may complain to the Court of Chancery, and then their Oaths may be made uſe for the Suitors to found a Demand upon, againſt their Predeceſſors.

And it is pretty remarkable, that their Deficiencies are neither more nor leſs than the Sums they at firſt paid to their Predeceſſors and to me, upon their being admitted to their reſpective Offices. In this therefore I apprehend your Lordſhips will think their Oaths are of very little value. It is hardly to be imagined, that they ſhould have been ſo long in their Offices, and have juſt ſaved nothing, nor waſted; and that they are not a ſingle Farthing either richer or poorer.

But whatever your Lordſhips Opinion, with reſpect to that, may be; I own, I cannot but think, that there is ſomething very extraordinary in the Attempt; that theſe two Men have agreed with two Maſters, that were in poſſeſſion of two good Offices for Life, to give one of them 6000 *l.* the other 7500 *l.* for their Places; and now, that they are got into poſſeſſion, would have the Mony back, and continue in the Places too: That is, in ſhort, they are tricking thoſe Maſters out of their Places, under pretence of buying them.

But whatever their Behaviour or their Eſtates may now be, they appeared to me Perſons of Reputation, and Fortune, when they were admitted. And I do not obſerve, that the Article hath ſo much as ſuggeſted, that I knew any thing to the contrary.

One of the Managers wondered that I ſhould let in Perſons of no Fortune; and he ſolves it only by this, that they would give better Prices.

That had been ſomething, if the Price had been given to me; but leaves it incredible, that I ſhould let in any, that I had the leaſt Suſpicion had no Fortune; for the old Maſters to receive 6000 *l.* and 7500 *l.* at the ſame time that they repreſent me acting upon the view of burying the Maſters, and having the whole Price myſelf.

Where I was to have the whole Price, and the Temptation was greater, there is no pretence I took in Men of no Fortune. And is it poſſible to think I would do it, where the Maſters were to have the Price, and I ſo ſmall a Proportion?

Great Streſs has been laid on comparing the Sums in the Maſters hands, with their Eſtates; in order to ſhew their Unfitneſs to be truſted with thoſe Sums.

How that Proportion is to be adjuſted, I own, I am a little at a loſs. Here is a Maſter, that has an Office that brings in a conſiderable Profit, and is worth 5000 *l.* which cannot be run away with: He has a handſome viſible Eſtate of 4 or 5 hundred Pounds a Year; and a good Reputation. How much Mony may he be properly truſted with? I do not mean as a Borrower, who may be preſumed in ſome want, of one ſort, or other, becauſe he borrows; but as a Caſheer for the Suitors? There are very few Bankers that have ſuch a Fortune to ſet up with. And I do not ſee that any of thoſe Bankers, that is a Man of good Reputation, and good Credit (tho' perhaps he has not a good Fortune of his own) is thought the worſe of by thoſe who deal with him, becauſe he is truſted with very great Sums, far more than he is worth. The more he is intruſted with, the more are his Gains, and the ſafer all think themſelves that have Mony in his hands.

There is in the Cloſe of this Article another Charge, that I *did publickly in open Court falſely repreſent the Maſters admitted by me, as Perſons of great Fortunes, and in every reſpect qualify'd for the Truſt repoſed in them, to the manifeſt Deceit and Injury of the Suitors.*

My

My Lords, as to that, I think nothing can more plainly ſhew, than this Article, and what has been ſaid upon it, the forced Conſtructions put upon what I do.

Mr. *Waller* proves, that in *July* 1723, I declar'd in Court, that *the Maſters were Perſons of as good Fortunes and Abilities as any Set of Maſters had ever been before them.* Which is ſpoke of the whole Body of Maſters, and not of thoſe only who were admitted by me. He ſays he was *aſtoniſh'd at it.* But he has given no Reaſon why. If he knew any thing, that any of them were not ſuch as I deſcribed them; a little Candour would have made him believe, that I was not rightly apprized of their Characters; and a little Concern for the Honour of the Court, wherein he was a Practiſer, would have made him ſet me right.

But, my Lords, is there any Reaſon aſſigned, why I ſhould think otherwiſe than I ſpoke?

Mr. *Lightboun* is examin'd, to prove, that he told me, ſome of them were ſuſpicious. But he does not ſay any ſuch thing. All he ſays is, that he took notice to me of Mr. *Dormer*'s Misfortune, and told me, he knew not how ſoon the like Misfortune might happen to others. Which might be, though they were all ſufficient; if the Perſon, with whom they ſhould depoſit Effects, upon going into the Country, ſhould fail.

But his Expreſſion is a little remarkable; that he cannot ſay he told me any of the Maſters particularly were ſuſpicious, "*For he did not know how* "*far he might be liable to an Action.*" An Action! what! for one Maſter informing the Chancellor, of the Circumſtances of other Maſters, in order to have proper Care taken! could he fear it? Who was to be the Witneſs? What muſt be the ground of the Action, if he told nothing but what was true?

But I think, he ſaid he had not any particular Grounds for his Suſpicion; and he ſays, *I was unwilling to believe it* of any of them. Why? becauſe (as he ſays I told him) *I had had very good Characters of them, and therefore I hoped they were all good Men.*

It was not very kind, in that Gentleman, to call it an *Unwillingneſs* to believe, there was Ground to ſuſpect them: When I aſſigned ſome Reaſons, why I ſhould not ſuſpect them; and he gave me none, why I ſhould.

So that here appears not any Reaſon, why I ſhould believe otherwiſe than what Mr. *Waller* heard me ſay.

But to what end ſhould I ſay it, if I did not believe it? Or how were the Suitors injured, or deceived by my ſaying ſo? Mr. *Waller* was not deceived; was any body elſe deceived? Or could any one be injured? But they have diſcover'd a reaſon, why I ſaid it. They ſay that Mr. *Fellowes* was juſt dead, and there was a Maſter's Place then vacant: And that fact they have proved. But can any thing be more ſtrained, than their Inference from it? Did I deſign, by ſaying theſe Maſters were Men of Fortunes and Ability, to raiſe the Price of that Vacancy? or to tempt Beggars to come in, that cared not what Price they gave? Does not what was then done, clear me of all Suſpicion of that kind? Mr. *Elde* was the Perſon then admitted, a Gentleman of a very good Eſtate, of very good Character in *Weſtminſter-Hall*, and 750*l.* more offer'd by another, that was no Beggar neither, refuſed. And after that, Mr. *Thurſton* was admitted, preferably to one that offer'd 6000*l.* Is it poſſible, that I ſhould give better Proof that I had not that avaricious View in it, that is ſuggeſted?

It was obſerv'd by one of the Gentlemen, that open'd the Evidence, that this was upon a *remarkable occaſion*, when the Maſter of the Rolls had made an Order upon one of the Maſters, to make a Suitor ſome Compenſation out of his own Mony in the Maſter's hands, and I ſet it aſide. And Mr. *Waller* began to tell ſomething of the Merits of the Caſe. But a very learned and a very judicious Gentleman, one of the Managers, was pleaſed to ſay, They did not diſpute the Juſtice of my Order; nor is there any Charge of ſuch Injuſtice in the Articles.

XII. The next Article is the 12th, which ſets forth

" That whilſt the ſaid *Thomas* Earl of *Macclesfield* executed the Office of Lord Chancellor, an unjuſt and fraudulent Method was practiſed in the Court of Chancery upon the Sale of Offices of Maſters of the ſaid Court, and upon the Admiſſion of new Maſters, that the Prices or Sums of Mony agreed to be paid for the Purchaſe of the ſaid Offices, and for the Admiſſion thereinto, were ſatisfy'd and paid out of the Monies and Effects of the Suitors of the Court depoſited in the Hands of the reſpective Maſters, ſurrendring their Offices, or dying; either by way of reteiner of the Purchaſe in the hands of the Maſter reſigning, or of replacing the Mony diſburs'd for ſuch Purchaſe or Admiſſion by the ſucceeding Maſter, out of the Mony and Effects of the Suitors coming into his hands; by which Practice the Price and Value given upon the Sale of the ſaid Offices, and Admiſſions thereinto, during the Time aforeſaid, were greatly advanced, and ſeveral Perſons of ſmall Ability and Subſtance were encouraged to contract for the ſaid Offices, upon a Proſpect of the eaſy Method of paying for the Purchaſe of the ſame, by means whereof great Deficiencies have incurred in the Offices of ſeveral Maſters of the ſaid Court, admitted by the ſaid *Thomas* Earl of *Macclesfield*, which they have not been able to anſwer and make good; and although the ſaid Practice was notorious and publick, and the ſaid Earl was well inform'd thereof, and fully acquainted therewith, yet the ſaid *Thomas* Earl of *Macclesfield*, in order to increaſe his own unjuſt and corrupt Profit in the ſelling the ſaid Offices and the Admiſſions thereto (which in conſequence of this evil Practice was rais'd and receiv'd by him out of the Effects of the Suitors, for whom he was intruſted) did not at any time, whilſt he continu'd in his Office of Lord Chancellor, uſe or take any Meaſures to reform the ſaid Abuſe, or to prevent the ſame; either by cauſing proper Schedules to be taken of the Money and Effects of the Suitors deliver'd over and transferr'd, or by appointing any Perſon in his behalf, to inſpect or ſuperviſe the Transfers or Deliveries thereof, or in any other manner. But on the contrary, the ſaid *Thomas* Earl of *Macclesfield*, unjuſtly, corruptly, and contrary to the Duty of his ſaid Office of Lord Chancellor (to whom the Superintendency of the ſaid Maſters and of their Accounts did appertain) did ſuffer the ſaid fraudulent Practice to proceed and be exerciſed without any Controul or Check, whereby great Embezlements have been made of the Suitors Money and Effects, to their great Loſs, in the Offices of ſeveral of the Maſters of the ſaid Court, who have not been able to anſwer and pay their re-

" ſpective

" ſpective Ballances owing upon their Accounts, in " breach of the Truſt repoſed in him for the pre- " ſervation of the Eſtates and Effects of the Sui- " tors, to the diſhonour and diſcredit of the ſaid " Court, and to the great injury and defrauding of " the ſaid Suitors in a Court of Equity, eſtabliſhed " for their Relief and Protection."

My Lords, In ſupport of this Article, two of the Maſters, Mr. *Kinaſton* and Mr. *Tho. Bennet*, have ſworn, that their Predeceſſors ſtopt the price of the Places out of the Suitors Mony, which was to be delivered over to them: and that they gave the greater Price for their Places, becauſe they found this an eaſier way of purchaſing them. Indeed I muſt confeſs, that according to the manner of proceeding of theſe two Gentlemen, it will come out to be an exceeding eaſy way, which they have diſcovered: ſince, if they can prevail in their preſent Attempt, they will have paid no price at all for them; they are to have their Mony back again, and not be in the leaſt impoveriſhed by the Tranſaction. But is there any proof, that I was (as the Article charges) well informed of it? Or that I knew any thing of it at all? Not in the leaſt, but only upon the Oath of Mr. *Tho. Bennet*, who ſwears that in a Converſation with me about a Treaty between him and Mr. *Hiccocks*, I took notice of an Article in his Account, delivered in to the Lords of the Council, wherein he mentioned 9075 *l.* of his Caſh to be in the hands of Perſons of Ability, meaning as he after explained it, in the hands of Mr. *Hiccocks* his Predeceſſor and my ſelf; and ſaid, I was ſorry for it, becauſe it was diſcovering the method of paying for their Places out of the Court Mony, which I had taken care conſtantly to deny.

This (ſuppoſing my meaning to be what he would have) is ſurprizing. He ſays that at the beginning of this diſcourſe I was ſo cautious, that I would not ſpeak to him about returning the Mony I had had, becauſe probably he might be examined about that Converſation in another place. And yet he pretends that in the ſame Converſation I told him this. But does even he pretend, that I ever knew this, which I had taken care to deny? And was this a time to tell him of it, when he ſays, I expected he might probably be examined about his Converſation with me?

But I believe your Lordſhips will not give him the leaſt credit, in this or any thing elſe that affects me. I beg leave to remind your Lordſhips that I asked him whether he did not then tell me, that, if Mr. *Hiccocks* would give him 2000 *l.* he would pay the reſt of the Mony (which was to ſhew that he was worth at the leaſt all but that 2000 *l.*) He denyed it. My Lords, I then told your Lordſhips I could not diſprove him in that, for I cannot be a Witneſs for my ſelf. Therefore I asked him to another thing, wherein, if he did not tell the Truth, I might be able to falſify him; I asked him, if he had not ſaid ſo to ſome body elſe? He poſitively ſaid, No. He ſaid there was ſuch a report, but he denyed the thing. At laſt he did own that he had ſaid, that if Mr. *Hiccocks* would repay 2000 *l.* he would ſtand it, or run the hazard, but never told any body he would pay the reſt; he was not able. But Mr. *Holford* ſwears, that *Tho. Bennet* ſent a Meſſage by him to Mr. *Hiccocks*, that if Mr. *Hiccocks* would repay 2000 *l.* he would diſcharge the Article in the Account, and take care to pay the reſt, and he believed that Mr. *Bennet* was able to pay it, or he would not have carried the Meſſage. And another Gentleman ſwears, that he ſaid he would make it up, and a third that he could or would pay it. So that he ſtands contradicted in this particular, which I apprehend is material, by three Witneſſes.

As to the Method of Payment mentioned in the Article, it is ſtated to be, that the *Price of the Office was ſatisfy'd out of the Effects of the* Suitors, *either by way of Reteiner of the Purchaſe Mony in the hands of the Maſter ſurrendring*, or of *replacing the Mony disburſed for ſuch Purchaſe by the ſucceeding Maſter, out of the Mony and Effects of the Suitors coming to his hands*: and the Methods ſuggeſted for preventing this, are, *cauſing proper Schedules to be taken of the Mony and Effects deliver'd over*, or *appointing Perſons to inſpect or ſupervise the Deliveries*; but *I took not theſe Meaſures, nor any others.*

My Lords, the Method of *paying by Reteiner* could only be upon *Surrenders*. And why ſhould I there aſſiſt to raiſe the Price? why aſſiſt to get a higher Price for one, whom I was to have no more to do with, only to have a poorer Man come in, that might bring Diſgrace upon the Court and upon me?

As for the other Method, the *replacing the Mony* paid, that is, as I underſtand it, borrowing the Mony to make payment, and then when the Effects are transferred, diſcharging the Debt out of them: How was that to be hindered? not by *Schedules*, and ſeeing *the Effects deliver'd* over. The *Delivery of the Effects* is neceſſary to put that Method in practice, and is far from hindring it.

But is this delivery over of the Effects ſo very material? Mr. *Meller* did not deliver over the Effects to Mr. *Borret* of ſome time: had they been ſtill in his hands, had it been the worſe for the Suitors? Whatever a Maſter does not deliver over, he continues reſponſible for, and the Suitors have the ſame Security for them, as they had before. *Hiccocks* and *Rogers* did not deliver over the Effects, but ſtopt Part for Payment; the conſequence is, that they are compelled to bring them in. Had Schedules been made, and the Effects deliver'd over, and ſo *Kinaſton* and *Bennet* been forced to purſue the other Method, the Suitors had not had either *Hiccocks* or *Rogers* at Stake.

Indeed I never apprehended it neceſſary for me to ſee the Orders for Transfers obeyed, any more than any other Orders of the Court. It is the Intereſt of the new Maſter to call for the Effects, and of the old one to have a regular Diſcharge, which I do not ſee how he can have, without an Inventory of the Particulars, and a Receit upon it; which is what I underſtand to be a Schedule, tho' it be never filed; tho' I apprehend the word Schedule is taken in a different Senſe in the Report to the Council. And this I did believe the Intereſt of the Parties had made them do. Nor has it yet been ſhewn, that it was my *Duty* to look after theſe Transfers. By what Law, by what eſtabliſhed Practice, where does it appear, that a Chancellor is bound to ſee ſuch Schedules made, and the Effects transferred? If it be his Duty, without doubt there is ſome Method, by which it may appear he has diſcharged it, in caſes where he has done ſo. But is there ever any Entry made of it? Are the Schedules filed with any Atteſtations, that the Effects were actually delivered over in preſence of Perſons appointed by the Lord Chancellor? The Effects in Mr. *Holford*'s Caſe were deliver'd over, I think, the day of his admittance, in Mr. *Lovibond*'s in about a Week, in Mr. *Bennet*'s in a ſhort time; whether in preſence of Inſpectors, ap-

appointed for that purpoſe, or not, has not appeared. Yet, my Lords, the Queſtion is not now, Whether it be wiſer and better to have Schedules prepared and filed, and for a Lord Chancellor to give Orders to ſee it done: But whether it be his *Duty* ſo that it is a *Crime* not to ſee it done? If the Suitors deſire to have Schedules filed, in order to be the better able to know how much the new Maſter is charged with: it is their part to ſearch and make Application; and upon ſuch Application, it is the Chancellor's part to make proper Orders; which they again are to take care to draw up, to enter, to proſecute, and ſee executed. And as to my Deſire, and Intention, to increaſe my own unjuſt Gain; which is to give the Tincture of Guilt to this, and make it criminal: can it be conceived, that I, who take not advantage of a higher Price, when I may have it; ſhould, in order to raiſe the Price, refuſe to check a Practice which the Maſters are ſuppoſed to make uſe of, to the prejudice of the Suitors, and only for their own Gain?

XIII, XIV, XV, XVI, XVII.

The 13, 14, 15, 16, and 17th Articles all relate to *Dormer's* Affair; and contain ſeveral ſuppoſed Stratagems to conceal his Deficiency: all founded upon the ſame View, and to prevent the Gain upon Sale of Offices from being leſſen'd. Without that View to Gain, I do not ſee any thing in theſe Articles, that is criminal. And therefore, if in your Lordſhips Judgment, I ſhall ſtand acquitted of that, upon a full examination how my Heart ſtood affected in that Particular, I think all muſt fall to the ground.

XIII. As to the 13th Article particularly; It ſets forth *That from an Apprehenſion that a publick Diſcovery of* Dormer's *Deficiency might leſſen the unjuſt Gain I propoſed to make to myſelf by ſelling and diſpoſing the Offices of Maſters, I neglected and declined either to ſecure his Perſon or Eſtate, or to make a proper Inquiry into the Deficiency; but endeavoured by many indirect Practices to conceal from the Suitors the true State and Condition of his Office, as well with reſpect to his Effects, as to his Debt to the Suitors.* And the latter part of the Article ſays, *That upon Motion made in the Court of* Chancery *(after I knew* Dormer *was abſconded) to have the Effects of ſome of the Suitors tranſferred to another Maſter for better ſecuring them, I, to delude the Suitors into a Belief that the Effects were ſafe, and thereby prevent a publick Inquiry, there ſaid, That the Parties need not be in haſte, that* Dormer *was only gone to take the Air in the Country, that he would return in a little time, and all would be well.*

As to this latter part, they have not ſo much as examined a Witneſs to prove it. So that what Evidence has been offer'd upon this Article, amounts in truth to no more, than a Proof of *Dormer's* being deficient. But as to any Endeavour of mine to conceal the State of that Affair; or any refuſal, or neglect to do my Duty; there is no Proof.

It appears, that he went off in *November* 1720, that his Clerk and his Servants by his Order, gave out, that he was only gone into the Country for a while. But he was gone into *Holland* for fear of a Gaol. I knew nothing of it till after *Chriſtmas*, and then all the Steps were taken that were thought moſt likely to get as much as poſſible for the Suitors. His Chambers were ſearched by ſome of the Maſters, and Directions were given to ſtop the transferring his Effects in the publick Funds. And it was carried on ſo far, that he was ſtripp'd of all, and with Tears begged, that Application ſhould be made to me, for ſome Allowance out of it for his Subſiſtance; which Mr. *Cottingham* refuſed, becauſe the Eſtate fell ſhort, and he knew I could not order him the Mony of other People. And it is not now pretended, that any thing was not diſcovered by him, but only a parcel of Hops; and that plainly was not concealed fraudulently; for he made no advantage of it; the Hops are unſold to this day.

But the Charge of concealing *Dormer's* Affair being the Foundation of ſo many Articles, give me leave here to ſay ſomething of it, tho' they have made no Proofs of it, or of the other Facts in this Article.

My Lords, He going away in *November*, and never appearing more in Court, or in his Office, but another put into his place in *May*; it is impoſſible his failing was, or could be, kept a Secret. Muſt not all the Suitors, who had Mony in his hands, know that he was gone? For my own part, I never imagined, it was a Secret. And as they, and their Agents, could not but know what was doing; had they not been ſatisfied, that the Court was taking the beſt meaſures to make up the Deficiency; would they not have made Application for ſome Relief? I did believe the Maſters would make it good, Mr. *Cottingham* ſwears he told me ſo from them: He indeed does not now rightly remember the time, and anſwered not at firſt very readily whether it were before, or after *November* 1721, when the ſecond Letter about the Accounts was wrote. But, of neceſſity, it muſt be before; becauſe Mr. *Edwards* ſays, Mr. *Cottingham* told him it would be made up, juſt about the time of his being made Maſter; which was in *May* 1721; and it is not pretended, there ever was any Thought, that it ſhould be made up any other way, but by the Maſters. Mr. *Edwards* ſays too, ſome of the Maſters told him it would be made up; He does not remember by whom they ſaid it ſhould be made up; but I think he ſays, he thought; I believe the thing ſpeaks, it could be by no body elſe but the Maſters. And even Mr. *Lighiboun's* Letter in 1722 takes notice of it as a thing always under deliberation, how the Maſters ſhould make it up; and that he differed from the reſt only in the Manner, and in inſiſting that at the ſame time care ſhould be taken, that the like Accident might not happen again, and they be expoſed to another Contribution. If I was too credulous in believing this, ſure it is no Crime. And I am apt to think, your Lordſhips will be of Opinion, that the Suitors believed the ſame, or thoſe, whoſe Money lay ſo that it might probably continue ſome Years, would have applied to have an Account taken, and that their Proportion ſhould be reſerved. But nothing of that kind was done by them. Afterwards there breaks out a Diſpute between the Maſters and the Maſter of the Rolls, thereupon Mr. *Lighiboun* informs your Lordſhips, that many Orders were made in prejudice of the Maſters in other Branches of their Office; the Language of the Court varied (as he expreſſes it) in Orders; and the Mony put into another Channel; whereby they loſt, not only any Advantage that might be made of the Mony, but many Fees and Perquiſites, that aroſe thereupon, and in the other Branches of their Office. Had not this happen'd, or ſhould it be cured, I am perſuaded that *Dormer's* Deficiency would all be made good. Contrary Meaſures may prevent it.

There was ſome little Reflexion made upon that part of the Evidence, which related to the Meſſage I firſt ſent to the Bank; and alſo for that the Order, which was afterwards ſent, and a Copy of it read, was never enter'd with the Regiſter.

But your Lordſhips have had an Account that the Effect of my Meſſage to the Bank (tho' there was no formal Order made) was, that a Memorandum was entered in their Books, that no Transfer ſhould be made without Leave from the Court of Directors, or Court of Chancery; which had the deſired effect. But it is true I made no formal Order, becauſe I did not apprehend, that I had Authority to hinder them from permitting him to transfer, by an Order of Court to be entered in a Cauſe, wherein they were no Parties. And that which was ſent after, was only to deliver them from the Reſtraint, they, it ſeems, look'd upon themſelves to be under, by that Meſſage; and to anſwer the Entry in their Book.

And as to its not being enter'd; I muſt likewiſe obſerve, that even the Directions ſent in *November* laſt to the Maſters by Advice of the Committee of Council, for preparing and bringing in their Accounts were never entered: and yet the Gentlemen will not imagine, that that could be with a deſign to have it kept a Secret; but the true and only reaſon of it was, that thoſe Forms are not neceſſary, but in adverſary Suits, or unleſs there be occaſion to inforce the execution of ſuch Orders by the Proceſs of the Court.

But they charge and argue, altho' they have proved nothing, that I have neglected my Duty.

My Lords, It is proved that I did a great deal more than they have proved to be my Duty. And what did I omit?

Obj. I did not (ſay they) ſecure his Perſon.

Reſp. My Lords, was that a Crime? He was in *Holland* out of my reach. When he came into *England*, it was to deliver up all he had to the Suitors, and on promiſe of Liberty.

But if I had, would that have been of uſe to the Suitors?

Obj. I iſſued no Sequeſtration to ſeize his Eſtate.

Reſp. The Eſtate was got without one, which is much better. The moſt uſual Allowance upon a Sequeſtration is *6 s. 8 d.* a day to every one of the Sequeſtrators that are employed to put it in execution, which would ſoon have eat up great part of the Eſtate. And I do not know that the Sequeſtrators would have found out the poor parcel of Hops, which is all that was not got then; and it was not imbezled, but has been brought in now without the help of a Sequeſtration.

Obj. I did not examine him upon Interrogatories.

Reſp. I order'd *Cottingham* to propoſe to the Maſters, whether they would have one; and they thought he would make a fair Diſcovery without, and were afraid leſt that appearance of Diſtruſt and Hardſhip might drive him away again, but if they ſhould find it requiſite, they would apply. No Application was ever made to me to have it, nor does there any fraudulent Concealment appear, nor any thing diverted from the Satisfaction of the Suitors. And if he made a fair and honeſt Diſcovery of all, what imports it, whether he were ſworn, or not ſworn to it?

But I would beg leave to ask, Why ſhould I neglect what was proper?

The Reaſon they aſſign is, That if I had done theſe things, it *would have made a Noiſe* and *brought the Matter out.*

My Lords, what could make a *greater Noiſe*, than that a Maſter in Chancery abſconded, and no Mony was received or paid, nor Buſineſs done in his Office from *November* to *May*, and then another put in his Place?

One of the Gentlemen expreſſes his Aſtoniſhment, how it could enter into my Heart, that this *could always be concealed*, or that ſo ghaſtly a Wound could ever heal of itſelf, without the application of proper Remedies.

My Lords, it is yet more aſtoniſhing, that it ſhould enter into my Heart to *endeavour to conceal* it for thoſe Reaſons which he ſuppoſes I had in View. And I ſhould have thought, the Arguments that raiſed his Wonder at my having done ſo, ſtrong Arguments that I never did it; And indeed it is *impoſſible* I ſhould endeavour or hope to conceal that, which I knew was ſo *notorious* and *publickly* known. Nor was I without Endeavours towards healing the Wound: Some of thoſe Endeavours are attempted now to be made part of my Crime.

XIV. The 14th Article ſuggeſts, "That the "ſaid *Fleetwood Dormer* having towards Satisfac- "tion of the Suitors of the ſaid Court, aſſign- "ed to *Henry Edwards*, Eſq; (who ſucceeded "him in his Office of Maſter of the ſaid Court of "Chancery) a Debt of 24046 *l.* 4 *s.* or ſome other "great Sum due from *William Wilſon*, a Banker, "to the ſaid *Fleetwood Dormer*, to the intent that "the Mony received on the Account thereof, "ſhould be applyed and diſpoſed of, as the ſaid "Court of Chancery ſhould Order and Direct, the "ſaid *Thomas* Earl of *Macclesfield*, whilſt he continu'd "Lord-Chancellor of *Great-Britain*, for the un- "lawful Purpoſes aforeſaid, with Regard to the "Intereſt of the Suitors, by Colour of his Office, "did, in an Unwarrantable, Clandeſtine, and Un- "uſual Manner, Authorize, Direct, and Eſtabliſh, "a precarious and trifling Compoſition with the "ſaid *William Wilſon*, upon the Terms of the ſaid "*William Wilſon*'s paying the Sum of 1463 *l.* 2 *s.* "1 *d.* and aſſigning 10000 *l.* part of a Debt of "22060 *l.* 12 *s.* 5 *d.* pretended to be due to the "ſaid *William Wilſon* from *Edward Poulter*, or to "that Effect, in diſcharge of the ſaid Debt: and "to that End, upon the Report of *John Hiccocks*, "Eſq; then one of the Maſters of the ſaid Court, "without any Attendance ordered or had there- "upon, and without Notice to the ſaid Suitors, "did by a private Order not made in open Court, "order the ſaid *Henry Edwards* to accept of the "ſaid Compoſition, in full Diſcharge of the ſaid "Debt, which ſaid *Edward Poulter* was a Perſon "inſolvent, and has ſince abſconded for Debt, "and none, or a very ſmall part of the ſaid 10000 *l.* "has been, or is ever likely to be received."

This Article your Lordſhips obſerve relates ſingly to the Compoſition with *Wilſon*, which is charged to be authorized by me to the unlawful Purpoſes aforeſaid, that is, to *conceal* Dormer's *Deficiency, and keep up the Prices of the Offices.*

Suppoſe this Tranſaction had been publick, nay, ſuppoſe *Wilſon* had been openly ſued for this Debt; would that have fallen the Price of Offices, or diſcovered *Dormer*'s Deficiency? If his abſconding and aſſigning his Place to Mr. *Edwards*, did not diſcover it; would the Proof of his aſſigning this Debt to Mr. *Edwards* have diſcovered it? What End then could the Privacy of this Tranſaction ſerve?

But

But tho' it does not anſwer the Purpoſe, that is charged. Yet it is inſiſted upon to be *prejudicial to the Suitors*, and giving *up a great Part of the Mony due* to them from *Wilſon*, and *done in a Clandeſtine Manner*, and *without their Knowledge*.

What Proof then is there, that this Compoſition was prejudicial to the Suitors? A ſmall one it is indeed, but for a deſperate Debt; and what Proof is there that they could have had a better; or that it had been better to have had none?

It is ſaid, that *Wilſon* paid to ſome of his Creditors their whole Debts.

It is true, that was ſaid, but it has not been proved. If it had been proved, and the Circumſtances ſhewn, probably it would have appeared, that he had a particular View in paying thoſe their whole Debts, and it might be more beneficial to him to do ſo, and keep them his Friends; than if he had paid them only a part, as he did to his other Creditors.

And as ſmall as the Sum is, my Lords, give me leave to ſay, it had never been got in for the Benefit of the Suitors, if this Compoſition had not been made. So that 2463 *l.* has been got for the Creditors, tho' no more ſhould be recovered from *Poulter*, than the 1000 *l.* already got from him; where nothing had elſe been had, for what appears.

Obj. But *Poulter* was inſufficient, and the Debt aſſigned from him worth nothing.

Reſp. As to *Poulter*'s Circumſtances at that time: Some Perſons have been called, who have proved ('tis true) that he was inſufficient at that time, and could not pay more than three or four thouſand Pounds; but the ſame Witneſſes give an Account, that his ill Circumſtances were then known but to four or five Perſons of his Acquaintance, and that by all other People, who had any Knowledge of him at that time, he was looked upon to be very ſufficient; he had left off his Buſineſs upon having raiſed an Eſtate; he was of good Reputation; he lived at *Hackney* in a Houſe making a good Appearance, with good Furniture, and a great quantity of Plate, till the laſt, till the time of his being put in Priſon, which was not till laſt Year, that he ſurrendered himſelf in diſcharge of his Bail.

But ſuppoſe he was not ſufficient, how does that affect me? I was not obliged to concern my ſelf with it, and left the Compoſition to the Management of the Maſters; they made it: *Wilſon* had ſworn an Affidavit in Writing of his Circumſtances, and that this was as much as he could pay to the Suitors; Mr. *Hiccocks*, a Gentleman of very good Reputation, was the Maſter, he being then Senior Maſter, to whom I referred the Conſideration of it, according to the Courſe of the Court; he was upon his Oath in what he acted therein, and made his Report, that he was of Opinion this Compoſition would be for the Advantage of thoſe to whom the Mony was to be paid. And upon that I grounded the Order.

Obj. But the Suitors had no Notice to diſpute it.

Reſp. The Conſequence of that is only, that Mr. *Edwards* being their Truſtee, and *Wilſon* knowing it, whatever could be done between them would not bind the Suitors, if it were any way detrimental to them: Therefore they have the Benefit of all that has been got in upon it, and yet have ſtill a right to enquire into the true Circumſtances of Mr. *Wilſon*, and to recover, in proportion with his other Creditors, any Effects he ſhall appear to have unfairly concealed.

Upon the whole of this Matter, could the Maſter, or I, have any indirect End to ſerve, by allowing *Wilſon* to compound at an under rate? It is not pretended I knew him, or could intend him a Favour. Why then ſhould I deſignedly leſſen *Dormer*'s Fund, which was before deficient, and which I was endeavouring to make up?

Obj. But it is ſaid, that this was by my Direction.

Reſp. Suppoſe it were; they have not proved any thing to induce a Suſpicion that it was not perfectly innocent, nay beneficial to the Suitors, or probable to be ſo.

But the Proof is only, that Mr. *Edwards* ſpoke to me about it, and asked me, if he might compound it of himſelf; I thought not: But Mr. *Hiccocks* having afterwards informed him, that it was uſual to do things of that kind upon a Report grounded on the Party's Oath, and an Order founded thereon; he propoſed that Method, and I thought it might be ſo done. And he did it.

But whether this was prudent, or imprudent; where is the Crime? This tended nothing to conceal *Dormer*'s Affairs: He was known to be broke; and *Wilſon*'s Debt was eſteemed deſperate. There was no other View, nor could be, but to get ſomewhat towards *Dormer*'s Deficiency, and no body is at all hurt by it.

Obj. But this was unuſual.

Reſp. In what?

Obj. No day was appointed to hear Councel upon it.

Reſp. My Lords, There was no occaſion for Councel; there was nothing for Councel to be heard to; there was nothing for them to argue. The Order is in direct purſuance of the Report.

Indeed, upon careleſly reading the Article, one would imagine the Charge to be, that this was an Order made upon Mr. *Edwards*, without giving him Notice, or hearing Councel for him. And that would be very unuſual and unjuſt; if it were not that it is ordered upon his own Petition, and at his own Requeſt.

Your Lordſhips will likewiſe obſerve, that this was the 3d of *Auguſt*, after the Seals were over; and if I muſt have appointed it to come on, upon a publick day (not to have it concealed) it muſt have waited till *October*; And by that time *Wilſon*, and his Effects, might probably have been gone, and the Opportunity of getting any thing loſt.

As to ſome few new Obſervations made upon reading theſe Proceedings, I ſee not how they tend to prove any Crime in me.

Obj. They are not filed.

Reſp. That is not my Affair. And if they are never filed, they will affect no body, and cannot poſſibly do harm.

Obj.

Obj. Some Lines or Words appeared razed out, which import that Mr. *Edwards* ſhould be indemnified.

Reſp. If he acted fairly in this matter, he would be indemnified, tho' thoſe Words were out; And if he did not, they ought not to be in.

In ſhort, here is not the leaſt Evidence, but that this Compoſition was made with a View to get as much as could be for the Suitors, out of a deſperate Debt; there is no body hurt by it; and if it be not of advantage to the Suitors, they may avoid it.

XV, XVI. The 15, 16, and 17th Articles were opened together; but one Gentleman ſpoke more particularly to the 17th, as being of a different nature from the others; and therefore I will ſpeak to it ſeparately.

The principal Subjects of the 15th and 16th Articles, are 4500 *l.* raiſed by the Maſters, and 1000 *l.* by myſelf, towards *Dormer*'s Deficiency.

In the laſt Article I ſpoke to, the Crime was, the leſſening *Dormer*'s Effects by a trifling Compoſition; in theſe, increaſing them 5500 *l.* is a Crime.

At firſt ſight, one would think this commendable, but by I know not what Fatality, every thing grows criminal by my having any concern in it. My Intention infects all. It is ſaid that I *intended* by it to *carry on my corrupt Purpoſes*, that is, as one of the Gentlemen explained it, to *conceal* Dormer's *Deficiency*.

But all that appears upon the Proofs offered relating to my Intentions is, that here was a ſtrong Deſire to make good *Dormer*'s Deficiency; And that way of concealing it is ſurely not blameable.

But then as to the 4500 *l*; it is ſaid, that I induced the Maſters to pay it by Colour of my Authority.

How is this proved?

Mr. *Conway* produces, and proves, the Receit he had given him by Mr. *Edwards*, *for* 500 *l. voluntarily contributed by him towards Mr.* Dormer's *Deficiency:* and ſays, that he had promiſed it in *February*, and paid it accordingly in *Auguſt*.

Mr. *Edwards* ſays, that in 1721 he received 500 *l.* apiece, from all the Maſters, but Mr. *Lightboun*.

Mr. *Lightboun* ſays, that when Mr. *Cottingham* ſpoke to him of it in *February* 1720, he told him, all the other Maſters had agreed to it; but Mr. *Lightboun* refuſed it: That I never ſpoke to him of it till *January* 1722, which was near two Years after; that then, I was ſo far from making uſe of my Authority, that when he asked me, whether it was my Propoſal, or the Maſters; upon its being ſaid, it came from the two Senior Maſters, he took occaſion to ſpeak more freely againſt it; and tho' I uſed ſome Arguments with him, yet he ſays I left him to his own Inclinations.

My Lords, theſe are their Proofs. But they are to be helpt out by ſome Conſtructions.

Obj. It is ſaid, that the Letter which I cauſed to be ſent in *February* 1720 to require them to give in their Accounts, was in order to terrify them to come into a Compoſition: for it is ſaid, when that had its Effect, and the Mony was paid, they were not obliged to bring in their Accounts.

Reſp. This then, I ſuppoſe, is that *Colour of Authority* by which (according to the Charge in this Article) I induced them to contribute.

But in the firſt place I beſeech your Lordſhips to conſider, whether it can be thought, that any of the Maſters would pay 500 *l.* rather than let me know what was in his hands? which was all the Conſequence of my having an Account. If it can not; why ſhould it be, without the leaſt Proof, imagined, that I ſhould expect it?

In the ſecond place I muſt beg leave to obſerve, that the Maſters beſt know, what effect that Letter had upon them, and what was the Motive of their advancing that Mony; but none of them have ſworn, that they were in the leaſt induced to pay the Mony by the fear of that Letter, or by the apprehenſion of being forced to give in their Accounts if they did not comply. Nor do the Circumſtances ſhew it. For Mr. *Conway* came in but in that *February*, and had but little Mony in his hands, and a very ſhort Account to make. Mr. *Kynaſton* and Mr. *Tho. Bennet*, who are now deficient, were not then Maſters. Mr. *Holford* had got an Account ready, yet he paid. Mr. *Lightboun* gave in no Account, and yet he did not pay.

So that upon a View of the Evidence, here is a good Action done, very beneficial to the Suitors; and no indirect Practice to bring it about.

And therefore the Charge not being proved, I am according to my general Plea, *not guilty of the Matters contained in this Article, or any of them, in manner and form as they are therein charged againſt me.* And there is no occaſion to make out, what I have ſtated in my Anſwer, to have made this matter more clear, in caſe they had given occaſion, by having produced Evidence to maintain their Charge.

However I have ſhewn a ſecond Letter, written by my Order, in *November* following, requiring thoſe Accounts with more earneſtneſs. Mr. *Cottingham* produces the Draught of it, and tho' he will not ſwear poſitively that he deliver'd or ſent it; becauſe he does not find any memorandum of it: he verily believes he did, and has not the leaſt ground to ſuſpect the contrary.

Your Lordſhips will obſerve, how very particular the Account was directed to be.

The firſt Letter was wrote the 14 of *February* 1720, Your Lordſhips will give me leave to read the Copy kept of it.

[*Reads.*] " 14 *February* 1720.

" I am commanded by my Lord to ſignify to " you, that you do, with all convenient ſpeed, " lay before his Lordſhip an Account in ſeveral " Columns.

" 1. Of the Cauſe.
" 2. Sollicitour, or Agent.
" 3. The Date of the Order.
" 4. For what Purpoſe the Mony was brought in.
" 5. How much was brought in.
" 6. When.

" 7

" 7. How much in hand.
" 8. How much on Securities.
" 9. How much paid out.

A diſtinct Account of Securities.

" 1. Cauſe.
" 2. From whom the Security is taken.
" 3. What the Security is.
" 4. In whoſe Name taken.
" 5. For how much each Security.
" 6. The total of the ſeveral Securities.
" 7. In whoſe hands lodged.

A diſtinct Account of Money paid out.

" 1. Cauſe.
" 2. By what Order, of what date.
" 3. When paid.
" 4. To whom.

The ſecond Letter is dated the 7 *November* 1721. And is in theſe words :

[*Reads.*]

" By my Letter of the 14 of *February* laſt, I " ſignified to you my Lord Chancellor's pleaſure, " which was that you ſhould with all convenient " ſpeed lay your Account before his Lordſhip, " the Method whereof was to be in ſeveral Co- " lumns ſubſcribed at the foot of that Letter. I " am now farther to acquaint you, that his Lord- " ſhip is very much ſurprized to find that in all " this time no ſuch Account hath been laid be- " fore him ; and therefore hath commanded me " to tell you, that it is expected to be delivered " on or before the laſt Day of this Term ; and if " this is not complied with, you will oblige his " Lordſhip (tho' very unwillingly) to think of " other Meaſures, which I doubt not but you " will avoid by a ready compliance with what " is a ſecond time required of you. And to the " end there may be no miſtake as to the Method " of your accounting, I have ſubſcribed it again " at the foot of this Letter.".

And Mr. *Cottingham* explains what he apprehends was meant by that Paſſage of *other Meaſures*, that I would make an Order in form, that is, an Order of Court to be entered with the Regiſter. He tells your Lordſhips what Repreſentations they made of the Difficulties of drawing up ſuch Accounts: And I did not afterwards inſiſt upon them. And your Lordſhips will be pleaſed to obſerve, that the Letter ſent by me, in Form of an Order, in *November* laſt, by Advice of the Lords of the Council, was for an Account much in the ſame manner. The words are theſe :

[*Reads.*]

" Dated 3 *November* 1724.

" Let the ſeveral Maſters of the High Court " of Chancery forthwith prepare and deliver to " me a perfect Account of the Mony in their " Hands, therein diſtinguiſhing in ſeveral Co- " lumns

" The Names of the Parties to the Cauſe.

" The Dates of the Orders for bringing in } { Mony or Securities.

" The Time of bringing in each Sum.
" Particularly expreſſing the Sums tranſ- " ferred and paid to them at their " coming into their Office, in the firſt " Place.

" How the ſame hath been diſpoſed,

" What Sums paid out, and to } { when and " whom, } { by what
" What inveſted in Securities, } { Order.
" Specifying the Securities by Dates, Numbers, &c.

" Where the Securities are at preſent,
" What Mony remains in their Hands,
" Where the ſame now is.

Mr. *Holford* tells your Lordſhips, that another Account was carried in by my Order inſtead of one ſo particular; for that an Account drawn up in that manner, would have taken up ſeveral Months : And in *February* 1721 or 1722 it muſt have taken up many more ; becauſe there were then Maſters, who had been much longer in their Offices, than Mr. *Holford* the now Senior Maſter had, in *November* laſt, been in his. And thoſe Accounts muſt have gone through their whole Time. And, if your Lordſhips will be pleas'd to look upon the Report on the Table, it will appear that the Judges and Directors reported, that no regular Accounts could be taken, unleſs they were brought down from the Beginning of the time, that each Maſter had been in his Office ; and yet the Lords never inſiſted on any ſuch Accounts afterwards (tho' I had made an Order for them by their Advice) nor the Lords Commiſſioners ſince ; which what is it, but falling into the ſame Sentiments that I had done before ? The requiring the Dates of the Orders on which Mony was paid, and the Sollicitors Names (which I found not one of the Maſters was able to give me) was intended by me, that I might be able to make ſome Examination into the Truth of the Accounts, that ſhould be given in. And for want of that, your Lordſhips know, what Methods the Lords Commiſſioners have been forced to take; to have the Accounts of the ſeveral Maſters printed and publiſh'd, and diſperſed throughout *England* at a publick Expence ; that People may come in voluntarily to make a Surcharge. And yet it is well known, that the preparing the preſent Accounts, ſhort as they are, containing only the Ballances of Securities and Caſh, which the Maſters owned to be then in their Hands in each Cauſe, ſo took up their Times, that the Buſineſs of the Court before them ſtood ſtill for ſome time, and their Attendance in Court was diſpenſed with. No Wonder then if I did not inſiſt on theſe Accounts, which were to be attended with ſo troubleſome, ſo tedious, and ſo fatiguing an Enquiry.

Theſe are ſome Facts, that I have not indeed examined to ; but with Submiſſion I do not ſtand in need of them : If I did, they are notorious ; and I believe the Managers, ſome of them at leaſt, know them, and will not deny them ; and the Maſters, being your Lordſhips Attendants, may be aſked to them, by any of your Lordſhips, who ſhall

think there needs any farther Satisfaction to be given concerning them.

Obj. But why then did I not content myself with the shorter Accounts, and take them at least, such as were deliver'd into the Committee of Council?

Resp. As to those Accounts; I shall beg leave to say something upon them under the 18th Article, which, I flatter myself, will give your Lordships intire Satisfaction on that Head.

Upon the 16th. Article I take the Liberty to say as to the 1000*l.* paid on Mrs. *Chitty*'s Account; I never expected that an Act of Humanity to Mr. *Lochman* should be made a Crime.

The supposed Crime, I think, consists in this, That it was in *farther Prosecution of my unjust and corrupt Purposes, that is, Keeping up my gain in selling Places, by concealing* Dormer's *Deficiency.*

How is this proved?

Mr. *Lochman* tells of his applying to me, and my saying to him at first, that it should be paid; but telling him after, that there were not sufficient of *Dormer*'s Effects left; that the Masters were in great Apprehensions of losing the Profits of their Places, and were not willing to advance any Mony; that he told me of a Composition he had made, that the Time was near; that then I said, I would order *Cottingham* to pay the Mony; but told him, that if Mrs. *Chitty* had nothing else, he might by marrying her make himself worse; for there would be no more Mony paid her thence. And he swears that he did not look upon that Sum to be paid out of Compassion, but only as it was due. He says, it was about a fortnight before the 1000*l* was paid, that I told him no more would be paid. Upon some Questions put to him by me, he said, he asked for another 1000*l* on account of Mrs. *Chitty*'s Children: But that after I had told him, no more than the first mention'd 1000*l* would be paid, which was a fortnight before it was paid, he asked it no more; and deny'd that he apply'd for the Payment of 500*l* or 574*l* after I had promis'd the 1000*l.*

My Lords, all this, supposing it true, does not prove that I paid this Mony to conceal *Dormer*'s Deficiency; for he says I told him before, that *Dormer*'s Effects were all gone; and at the Time when I made the Promise of that Mony, I told him no more of her Mony would be paid.

And is it rightly collected from this Action, without farther Proof, that my Intention in paying this Mony, was to *conceal* the very thing, which I at the same Time *expresly published?*

But, my Lords, it is fully proved on my Part by Mr. *Cottingham* and Mr. *Elphinstone*, that this 1000*l* was advanced out of a generous Compassion, and not out of any by-end: That his Application was founded on this, that he was to marry Mrs. *Chitty*, and was to have this 1000*l* to pay a Composition for his Debts; that I had sent him word of the Deficiency, and that he could not have the Mony; so the great Secret was out: But that he afterwards appear'd in the utmost Distress and Agony, in Danger of laying violent Hands on himself, and desperate: This Distress moved me; I told him, I would order the Mony to be paid out of Compassion to him; he afterwards spoke of it with the utmost Acknowledgment: I told him this, and gave the Order accordingly on *Monday*, and it was paid the *Thursday* following, which was the 30th of *July*; and as to Mr. *Lochman's* Testimony, who denyed that he apply'd for a farther Sum; it has been proved, under his own Hand, that he apply'd for 574*l* for Mrs. *Chitty*, on Pretence she could not otherwise spare him the whole 1000*l*, and this after the time was appointed for Mrs. *Chitty* to receive the 1000*l.*

Here the Earl of *Macclesfield* informing the Lords, that he found himself so far spent, as not to be able to proceed at present, the House adjourned during Pleasure, and after some time the House being resumed, the Earl of *Macclesfield* went on.

My Lords, when your Lordships were pleased to allow me to retire, I was just upon Mrs. *Chitty*'s 1000*l*, and had spoke of that Part of the Transaction that related to Mr. *Lochman*. And as to the next, which is the Charge of endeavouring to persuade the Masters to advance that 1000*l*, and using the Arguments in the Article mention'd for that Purpose:

Upon the Evidence it does appear, that there was a Meeting of the Masters at my House in the latter end of *July* last; and some such Arguments used as in the Articles, but not (as is charged) to have a present Purpose of paying the 1000*l* answered, but to have *Dormer*'s Deficiency all made good, by small annual Payments out of each Office. A View, which I hope your Lordships will think very innocent and commendable, whether likely to be successful or not. And this was so much the Intent of my desiring the Masters to come together, that tho' that 1000*l* was the immediate Occasion, that discover'd the Effects to be then all gone, and so might naturally be mentioned, and I doubt not but it was, I do not yet remember that I persuaded the Masters to pay it; Nor does Mr. *Lovibond* remember it; and Mr. *Holford*'s Expression was (if I took him right) only, that he apprehended it was mentioned *as if* the Masters should contribute to make up that 1000*l.* However, my Lords that was not the End which I aimed at and mentioned; and upon the whole Evidence all agree, that the Discourse about the 1000*l* was soon over, and ended with my saying, That I would take, or had taken, Care of it. Mr. *Lightboun* says, he is not sure which of the two Expressions I made use of. And even Mr. *Tho. Bennet* says, that when I had said so, nothing was afterwards said of that, but of *Dormer*'s Deficiency; and then came in the Discourse of the Parliament. Mr. *Holford* represents it, that after some Discourse of the 1000*l*, I spoke of *Dormer*'s Deficiency; and particularly of the Mischief, which was what Mr. *Edwards* had a little before said, that some had had all, and others none (which would not at all be cured by Payment of this 1000*l*) and that then I mentioned, that that might make great Clamour, and possibly occasion a Parliamentary Enquiry: Where if it were resolved that buying those Places was against the Statute of *Ed. 6.* it might affect me in the Disposal of the Places, and the Masters in the Enjoyment of their Places: He says several things were proposed, but nothing agreed on. One Proposal was, whether if the Masters were continued on the same Foot they had been, it would not be worth their while to contribute?

The Masters have not had so good Memories in this Case as I hoped. But Mr. *Lovibond* does swear,

ſwear, that all or the greateſt Part did then agree, that if their Offices were eſtabliſh'd, as they had been for forty Years, they would make an annual Contribution towards *Dormer*'s Deficiency. And he heard no body ſay otherwiſe, only he himſelf (he ſays) did not agree to it.

So that it appears upon the whole, that what I ſaid was not with Intent to ſupply a preſent Purpoſe, as is charged; for I had declared to them, I had taken care of that, or would take care of it. And if I could, by ſetting ſuch an Example, or by any Arguments I could uſe, induce them to contribute by Payments, as they could be ſpared out of the Profits of their Offices, to make good the whole Deficiency, or if not all, yet to make good the Proportion of thoſe who had had no part of *Dormer*'s Effects, I ſee no harm; and I am ſure there was no Fraud in it. It is to conceal it and prevent Clamour or Inquiry about it, only by paying it; which would leave no Room or Occaſion for Clamour or Inquiry; or if they could not pay the Whole, by paying the Proportion which any one could be intitled to.

And this Propoſal, to have it paid by Annual Payments out of the ſeveral Offices, did not tend to raiſe the Price of them, but on the contrary by laying a Burden upon them, would greatly diminiſh their Value.

Whether the Deſign I had, or the Arguments I uſed, were prudent, or diſcreet, or proper, I ſubmit to your Lordſhips Judgment; but the Arguments were not uſed for the Purpoſes in the Article, but for the Benefit of the Suitors of the Court.

But to give this ſome appearance of a Crime, they are forced to attribute it to criminal Views and Deſigns, of which they have made no Proof, nor ſhewn any Probability, ſcarce Poſſibility, that they were the Principles of this Action.

I might farther obſerve, that the paying the 1000 *l.* and leaving the 500 *l.* (which in the very ſame Order is directed to be paid to the Plaintiff) unpaid, and the 574 *l*, demanded by Mr. *Lochman*, unpaid; would not at all hinder the Deficiency from breaking out.

As to the Expreſſion charged in the End of the Article, to be uſed by me, I agree, I uſed one very near it; but with other Expreſſions along with it (which the Witneſs in effect owns) that ſhew, I could not poſſibly have any ill Deſign in it; nor could any Inconvenience enſue upon it. No Queſtion had till that time been laid before the Court relating to *Dormer*'s Deficiency: *Chitty*'s was only an Application for Favour, for a Sum then particularly wanted, becauſe there were at that time no Effects, and was paid by me out of Compaſſion; there was no Queſtion of Right about it to be decided, as was here, when the Diſpute was, who was to bear the Loſs, if any, and could be determined only upon Circumſtances. I at the ſame time was ſo far from endeavouring to have it believed, that there was no Deficiency in *Dormer*'s Office, or that I knew not of it, that I declared a great deal, which I knew about that matter.

As to what they object, that the Order is drawn up in ſuch a manner as implies (as they ſay) my being wholly ignorant of the matter, by directing an Enquiry whether there was likely to be any Deficiency or not:

Give me leave to ſay, that if I had known more of it; if I had known to a Farthing what *Dormer*'s Deficiency would be; I could not as a Judge found an Order upon my own private Knowledge, but muſt make it in the ſame manner as if I had known nothing at all; and accordingly that Order is worded in the ſame manner, as it muſt have been, if I had never heard of *Dormer*'s Failure before.

Beſides, it had been then talked, that *Wilſon* had not dealt fairly in his Compoſition; and if ſo, and if he were worth it, the Suitors might recover near 22,000 *l.* more againſt him. A matter extremely proper for the Maſter to enquire into.

XVII. As to the 17th Article, which relates to Orders for payment of Monies depoſited with *Dormer*; which Mr. *Edwards* (as is charged) was directed by me to pay, without *regard* to that *Proportion*, which ought to have been obſerved in a defective Fund.

They have read four Orders made by me, and no more, three of them in one Cauſe; and only one of them directs the whole Mony to be paid out. I ſaid in my Anſwer, that I did not know that I had made any other Order than that of *Chitty*; but believed the Court might have made others: which gave occaſion, it ſeems, to ſome of the Gentlemen to wonder at the Diſtinction between me and the Court. My meaning was, that ſuch Orders might have been made by the Court in my abſence, for ought appeared; that is, by the Maſter of the Rolls and Judges, with others in Commiſſion for hearing of Cauſes.

But as to what was done by me; the proper Anſwer to this Article, the true one, and I hope a ſatisfactory one, is, that I acted ſo as I thought would be moſt for the good and benefit of the Suitors. I fully believed all along, that the Whole would be made good, to which I contributed all I could; and I acted accordingly. If I was miſtaken, I hope it is no Crime.

XVIII. As to the 18th Article, three Neglects are charged upon me in this Article.

1. Not taking proper care of the Securities lodged with the Maſters.

2. Not taking Security for the Caſh.

3. Not taking the Maſters Accounts.

There is another thing expreſſed, which is permitting and incouraging the Maſters to traffick with the Suitors Mony and Effects. But that I apprehend means only, that the not taking due care to hinder them, is permitting and incouraging them. So that it does not make a diſtinct Branch of the Article; but is only a ſuppoſed Conſequence of the reſt.

As to the *Securities* and *Caſh*, what I am charged to have omitted doing, was never done before by my Predeceſſors, nor deſired then of me by the Suitors. And, therefore I ſuppoſe, there is a particular Reaſon aſſigned why it ſhould have been done by me, tho' not before; and that is Mr. *Dormer*'s

mer's Failure, which is charged to have been chiefly occaſion'd by his taking upon himſelf *unduely to diſpoſe and employ* the Mony and Effects of the Suitors in his hands. And this the Article charges that I knew.

My Lords, as to this particular Reaſon: To add a new Duty to my Office from it, and to lay me under an Obligation to do that, which my Predeceſſors were not obliged to; it ought to be clearly made out that the Fact is true, that this was the Cauſe of *Dormer*'s Failure; that I knew it to be ſo; and that thereby it became my Duty, unasked by the Parties intereſted, to make the new Proviſion expected. But there is no Proof that *Dormer* did unduely diſpoſe of or employ the Mony and Effects of the Suitors in his hands; much leſs is it proved, that I ever knew it, or had the leaſt reaſon to ſuſpect it; but the contrary.

The Account Mr. *Parkhurſt* gave of what paſſed at the time of *Dormer*'s going off, was this (which was repreſented to me, and never ſhew'd to be falſe) That Mr *Dormer*, who was his Uncle, informed him, that having happened to receive a greater Sum than ordinary out of the Exchequer, and going into the Country in the Long Vacation 1720, he knew not where to leave it ſafer than with Mr. *Wilſon*, an eminent Banker; and he left it with him to the value of 24,000 *l*; that upon his return to Town, he found Mr. *Wilſon* ſtopt payment; and that therefore he would withdraw himſelf, for fear of a Gaol; that accordingly he went into *Holland*, and wrote a Letter from *Rotterdam* to Mr. *Parkhurſt*, with one incloſed, to be ſhewn to the Maſters, and ſent to me or Mr. *Cottingham*; he gave ſome account of the Letter, that it ſet forth the Caſe to the effect above; and the Draught thereof is in the hands of the Managers, which they might produce, if they thought proper. This I took to be the true State of the Caſe; and never heard any thing to the contrary (except Mr. *Lightboun*'s Gueſſes, founded on no Fact, but on the greatneſs of the Sum, which this accounts for another way) till *December* laſt, when I was told, that *Wilſon* pretended, he borrowed it of Mr. *Dormer* at an high Intereſt; but as this appears to be ſpoke in excuſe of himſelf, an After-thought at four Years diſtance is little to be regarded, and however, if it were true, ought not to affect me, to whom it was never diſcloſed. But according to this that I have ſtated above, which was certainly the truth of the Caſe, or however what appeared to me; *Dormer*'s Failure was not occaſioned by his undue diſpoſing of or employing the Mony and Effects; but it was a *Misfortune owing to the Year* 1720, and Circumſtances peculiar to that Time; ſo not likely to happen again. On Dr. *Eddisbury*'s Failure there appeared no Accident, but his own ill Conduct: Yet no Change was made by the Lord Chancellor, as to the Effects, or Caſh, or giving Security.

But it was urged, that tho' this had not been deſired of me by the Suitors, it had been propoſed to me by the Maſters themſelves:

And three of the Maſters were called to prove this. But only two of them pretend to have ſpoke to me about it, Mr. *Lightboun* and Mr. *Kinaſton*, Mr. *Holford* the 3d ſays, He never was once with me about it, only he liked ſome things which Mr. *Lightboun* told him he propoſed.

Mr. *Lightboun*'s whole Evidence, taken all together, clearly proves what I ſet forth in my Anſwer; that I had in view three things. 1. The making good *Dormer*'s Deficiency. 2. Settling the Maſters in their juſt Rights. 3. Securing the Suitors from future Accidents. The 1ſt was the Principal, and always uppermoſt with me. The 2d was plainly neceſſary, in order to that. The 3d for ſecuring the Suitors from future Accidents of that kind, I was likewiſe very deſirous of; but, I own, at that time, while I thought the Maſters then in being Perſons of Ability and Subſtance, and he gave me no reaſon to think otherwiſe, I apprehended there was no need of any extraordinary Expedition in it.

As to making good the Deficiency; It appears, that at the time of Mr. *Lightboun*'s Propoſal, the Maſters were all willing to contribute; only Mr. *Lightboun* ſtood out; and his Reaſon, which in his Examination to the 16th Article he ſays, he upon one Occaſion mentioned to me as ſufficient, was, that it would be a Precedent for his paying other Debts of other Maſters. And upon his Examination to this Article, he ſays, that he told me in diſcourſe on that Subject, that as *Dormer*'s Accident had happened, the like might again; and ſo often, that it could not be ſupported; and afterwards, that if any thing could be done to make good *Dormer*'s Deficiency, and put things upon a ſecure Bottom, he would be as ready to contribute as any body. He then gives an account of the Propoſals he made, which he ſays, I deſired him to reduce into Writing for my Conſideration, which he did; the Copy of it was produced and read, and I have the Letter it ſelf here in my hand; and there only, I apprehend, is to be found the Propoſal which is to affect me, and not that which he now from his Memory mentions to be the Propoſal, but differs from the Writing in ſeveral things; which not being in the Letter, if he had mentioned them curſorily in that Diſcourſe, I muſt have looked upon them as what upon farther Conſideration he did not think proper.

My Lords, The occaſion of the Propoſal was my ſpeaking to him about contributing to *Dormer*'s Deficiency; and both that and the Propoſal it ſelf ſhew, that it was really no more, than laying before me the Terms upon which he would contribute.

In thoſe Terms, the principal thing inſiſted upon by him was, that the Mony ſhould be continued to be brought before the Maſters; which, I apprehend, had then been a little broken in upon: which is expreſſed in theſe Words, ſhewing the Improbability, that a Fact objected ſhould happen, "if (as his words are) the Mony be directed as "uſual to be brought before the Maſters, both "by your Lordſhip and the Maſter of the Rolls; "*without which the Maſters cannot think themſelves much intereſted in the Event of Mr.* Dormer's *Affair.*"

The

The other thing he inſiſted upon was, that he ſhould be ſecure from being expoſed to the like Inconvenience, by failure of another Maſter; and therefore what he propoſes in relation to ſecuring the Effects, is not a thing propoſed to be done of itſelf, ſeparately, but in company with the other Regulations.

That part that relates to the Rights of the Maſters, was afterwards preſſed farther, as it was apprehended they were more broken in upon; and produced the Repreſentation of the Maſters, which Mr. *Lightboun* the other day mentioned to your Lordſhips.

And this likewiſe explains ſeveral parts of his Evidence: It explains what he ſays, that he preſſed me ſo often to do ſome thing, and thought that to be *Irreſolution*, which was indeed my *Caution* to proceed upon ſure Grounds, in doing a thing, which, if not perfectly well founded, might have the Appearance of being contrived on purpoſe to advance, or keep up the Profits of the Offices of the Maſters. It explains his Apprehenſion, that if I did not do it, it would not be done by my Succeſſor, unleſs the Seal ſhould come into the Hands of a noble Lord, whom he named. It ſhews, that what he preſſed, was not ſo much for the Maſters to give Security, or to make up *Dormer's* Deficiency, and retrieve the Honour of the Court, as to have Orders made, for the Benefit of the Maſters; which I thought ought to go together.

For it wanted no Reſolution in me, or in any other Chancellor, to make Orders upon the Maſters, to ſecure the Effects of the Suitors in their Hands; had that been the thing preſſed, and eſpecially if, as is pretended, they themſelves deſired it. But it might require Reſolution to ſupport the Maſters againſt the Claims of an honourable Perſon, with whom they then had a Diſpute.

This View of this Matter will make your Lordſhips conſider it in a different light from what the Managers have endeavoured to ſet it in; and that my Slowneſs did not proceed from my concern for the keeping up of the Maſters Offices, but from my Caution not to be too precipitate in advancing them.

And had I taken the Meaſures deſired, and made Orders to prevent the Maſter of the Rolls from directing, in his Decrees, the Mony to be brought before the Uſher, and from referring Irregularities to the ſix Clerks; and to ſettle in their favour the other Matters in diſpute (tho' I will do them the Juſtice to declare, that I do ſo far, as I have ſeen of it, think the Maſters in the right therein) yet I am apprehenſive, that at firſt ſight it would have been matter of Complaint againſt me, as a contrivance to advance the Offices of the Maſters; and that the Schemes propoſed by Mr. *Lightboun* for giving the Security he repreſents as ſufficient, would not have been thought a Ballance to it.

Having ſaid this, give me leave to weigh the Propoſals.

And firſt, his Propoſals for providing for *Dormer's* Deficiency.

The way of doing it, which he propoſes, is this: Having ſtated, in the firſt page of the Letter, what he takes to have been the occaſion of "*this great Deficiency*, he goes on, "which I "hope may be provided for, and the Credit of "the Court retrieved and ſupported by every "Maſter advancing 2000 *l*, or ſuch other Sum, "as ſhall be agreed on, out of the Caſh of the "Court in his Hands; which being placed out "at Intereſt, the yearly Income thereof, toge-"ther with the Produce of Mr. *Dormer's* Eſtate, "will anſwer the Demands that may be ex-"pected on his Succeſſor, and will in due time "make good the Debt upon the Office."

But as to this, I thought it both impracticable and inſufficient; and I told him, and he very fairly owns it in his Evidence, that I could not make an Order of that kind; becauſe it would indeed be ordering one Man's Mony to be put out at Intereſt, to pay another's Debt.

His next Propoſal relates to the *Securities*, lodged in the Hands of the Maſters, which he thought of the greateſt Conſequence; becauſe, as he now ſays, he told me that *Dormer's* Accident came by trafficking with Securities; which he inferred from a Suppoſition that there was not then ſo much Caſh in his Hands. This Fact is contrary to the Repreſentation made as above to me, and the Suppoſition, with reſpect to the quantity of Caſh, is obviated by his having juſt received a great Sum out of the Exchequer. And your Lordſhips have heard from the Report to the Lords of the Committee of Council, that the Maſters have brought in all their Securities; ſo that what Mr. *Lightboun* thought the greateſt Danger, has proved to be none at all.

However, to prevent that, which he thought the greateſt danger, he propoſes the taking all Government Securities for the future, in the Names of two or more Maſters; his Words are in page the 2d. "Having before obſerved from "whence this great Deficiency aroſe, I ſubmit "it to your Lordſhip, "whether the taking all "Government Securities for the future, in the "Name of two or more Maſters, may not pre-"vent the like Misfortune hereafter." He ſays now, that he propoſed them to be taken in the Names of ſome Maſters, and of a third Perſon; but that is not mentioned in the Letter, nor does Mr. *Holford* mention it in his Evidence.

As to this Propoſal, he has now ſworn, as the Truth is, that I ſtarted a Difficulty upon that Head, by objecting that this would not anſwer all Caſes, particularly with reſpect to the *Eaſt-India* and *South-Sea* Bonds, by reaſon that they are payable to the Bearer. And his Anſwer was, That there was no neceſſity of taking thoſe Securities; ſuch might be taken as are transferrable in the Books of the Companies.

On conſulting others upon this, I found, that as to *Eaſt-India* and *South-Sea* Bonds, wholly to diſallow the taking thoſe Securities would be hard. Many People chooſe them, becauſe there is little variation in the Price, only ſometimes a few Shillings higher or lower; whereas in Annuities, and much more in other Stock, the fall of the Price, by the time the Mony was to be paid out, might eat up the Intereſt and more. That there would be a difficulty to diſpoſe of thoſe at that time in the Hands of the Maſters; probably the Owners would not conſent; it had been their Choice, that had determined the laying out of the Mony upon thoſe Bonds; that to ſend them to the Market all together would occaſion a fall of the Price, and a great loſs, which would raiſe a Clamour, and give great Diſſatisfaction.

I thought theſe ſeveral things had great Weight, and deſerved moſt ſerious Conſideration. I then thought of locking up theſe Bonds in Cheſts, with two Locks, one to be kept by the Maſter, to whom they belonged, and the other by the next Maſter after him, and to take the other Securities in the Name of two Maſters.

But I was told by Perſons of great weight, that that was but two Maſters inſtead of one, and would not be ſatisfactory: And ſhould I join more of them, it would occaſion more trouble, and poſſibly more charge; but they were ſtill Maſters.

At laſt I reſolved to take the Securities (other than the Bonds) in the Names of two Maſters, and a third Perſon to be named by the Parties. But ſtill I ſtuck at the Bonds, and was never ſet right in that, till it was too late. But I have now learned, which neither I, nor Mr. *Lightboun*, as your Lordſhips may obſerve by his Evidence, had skill enough to know, that they might be indorſed to two Maſters and a third Perſon, and ſo the Property be fixed in them. Which, had I afterwards continued Chancellor, I was determined to have put in Practice.

As to the Caſh, how that might be made ſecure, his whole Propoſal is contained in theſe Words in the ſecond Page: "The Depoſit to "be put out at Intereſt, to raiſe a Fund for the "Payment of Mr. *Dormer*'s Debt, together with "our Office, would in a great Meaſure be a "Security for the Caſh, with which we ſhould "then only be intruſted." By the Depoſit he means that of 2000 *l*, or ſuch other Sum, as ſhould be agreed upon, as I before read to your Lordſhips.

This is the Nature of his Propoſal, with relation to the Security for the Caſh; which I apprehend muſt appear to be neither practicable, as I obſerved before, nor ſatisfactory. And had I built upon this, and made a Regulation accordingly, I was very apprehenſive thoſe that were before diſſatisfied, would call it *trifling*.

He then takes notice of the Mony being lodged with the Maſters very effectually, tho' it is by way of anſwer to an Objection, that every Maſter may not always have ſuch a Sum in his Hand; to which he anſwers: "*I will* "*venture to ſay, it's ſcarce poſſible that can happen,* "*if the Mony be directed as uſual by your Lordſhip* "*and the Maſter of the Rolls*;" and then he adds (to ſhew the Streſs laid upon this) "*without* "*which the Maſters cannot think themſelves much* "*intereſted in the Event of Mr.* Dormer's *Affair*." And ſays in the 3d Page: "If I have the happineſs to have offered any thing thought practicable by your Lordſhip, when I have the "Honour to be admitted to wait upon you, I "hope to ſatisfy your Lordſhip, that I ſhall with "Pleaſure contribute, as becomes me, to facilitate any Undertaking of this kind."

I think this proves what I ſaid in the beginning; and I ſubmit it to your Lordſhips, whether I am criminal in not complying with theſe Propoſals.

My Lords, I have told your Lordſhips ſeveral thoughts I had about the Securities. Give me leave to mention ſomething of my thoughts, with relation to the Caſh.

I thought to take a ſmall Security would only ſhew that I was convinced that a Security was neceſſary, and yet trifled in it; and thoſe, that were willing to find fault, would ſay, it was done only to amuſe the Suitors and lull them into a falſe Security.

And till I could adjuſt the matter of the Securities lodged with them, particularly the *Eaſt-India* and *South-Sea* Bonds, no Security, that it would be practicable for the Maſters to give, would bear any Proportion to what was in their hands, when it ſhould be 50, 60, or 80 thouſand Pounds.

But if I could contrive to make all the Securities ſafe, and reduce the Caſh into a narrower Compaſs, by making Orders for putting out the Money of courſe, whenever, through neglect of the Parties, or otherwiſe, it ſhould happen to lie beyond ſuch a time; then a Security might be given by the Maſters to anſwer it.

But, as I told your Lordſhips, the *Eaſt-India* and *South-Sea* Bonds were too hard for me, till the matter was before the Committee of Council; and had the Maſters behaved themſelves, as I expected they would in the matter of their Accounts, I then intended to have laid my thoughts before the Council, and to have had their Authority and Sanction for putting them in Practice.

The other Propoſal ſuppoſed to be made to me, is ſpoke to by Mr. *Kinaſton*, and him only. And though he ſays all, or moſt of the Maſters, agreed to it, and thereupon he waited upon me about it; I do not find that any of the reſt know any thing of it. I obſerved, that neither Mr. *Lightboun*, nor Mr. *Holford*, both produced to this Article, are examined to this great matter, upon which the Maſters are ſaid to be agreed: Nor is any other Maſter called to it, tho' his Account of it is ſo very imperfect, and ſtands in need of being explained, as well as ſupported. As to the Securities, it reaches not all; the Bonds are left under the ſame difficulty as before: And as to the Caſh, he mentions no Sum or Value in which the Security was to be given.

But, my Lords, upon the whole, both from what Mr. *Kinaſton* and Mr. *Lightboun* ſay, it is plain they were conſulting their own Intereſt, to keep the Office free from Incumbrances: and their Intereſt and mine (if I could have any in view) was the ſame: So that if it was their Propoſal, what ſhould hinder me from agreeing to it, but that I thought it inſufficient?

The third thing charged in this Article, is, That I did not take the Maſters Accounts, that is, Accounts of what Effects of the Suitors they had in their hands.

My Lords, It is true, this was proved to be done by my Lord *Cowper* at his entrance into his Office, both the firſt and ſecond time; it was done by another noble Lord, as has been proved at your Lordſhips Bar, once, and I believe it was done by that Lord oftner.

My Lords, Had I taken their Accounts too, I doubt in me it would not have had the ſame approbation, as it had in thoſe noble Lords. In my caſe it would have been asked, What care I had taken to be ſure that the Accounts delivered me by the Maſters were true? whether I had ſeen the Securities and Caſh? and what

what Satisfaction I had, that they were able to make them good? I ſhould, perhaps, have been told, that without that, the bare taking of an Account was of no uſe. And thoſe Enquiries were of ſuch a Nature, that if they were to be purſued effectually and with exactneſs, I own I had not ſtrength to go through them.

Nor did I think the taking Accounts from the Maſters neceſſary, becauſe I do ſtill take the Liberty to ſay, I was fully perſuaded, all the Maſters were good and honeſt Men; and if they were not, I do not ſee it would be of any uſe to take ſuch Accounts. For I would be glad to know, whether if I had taken an Account yearly from every Maſter, he would have been one half-penny richer or poorer, or at all more able to pay the Suitors?

Obj. It is ſaid indeed, that all theſe were wilful Omiſſions; and for fear the Price of Places ſhould be ſunk.

Reſp. But of that there is not the leaſt Proof. And the Circumſtances of the Caſe above ſet forth, I hope, give a much more natural account of it. And the Difficulty what to do in ſuch a caſe cannot be expreſſed by any words I can make uſe of ſo ſtrongly as by what has paſſed, ſince I order'd the Mony and Effects to be locked up, and lodged at the Bank, which were intended (and ſo the Order of the 17 *December* expreſſes it) to continue there only till the Affair could be more maturely conſidered, and a proper Proviſion made for the Security of the Suitors. Five Months are now elapſed, and nothing has been yet done: Tho' the Suitors ſuffer vaſt Inconvenience. For, in order to get any Mony from thence, there muſt be a Maſter and a Six-Clerk and two Directors, and a Certificate from the Regiſter, which occaſions ſo great an Expence, that, in the caſe of ſmall Sums, People do not think it worth their while to go for them to the Bank, but chooſe to be without their Intereſt rather than come at it through ſo many Difficulties. And if the Lords Commiſſioners, three of them, ſuch great Men, have found this Matter too difficult to ſettle to their Satisfaction; is it a Crime in me, that I was not able to diſcover a Method for making things eaſy and ſecure?

This Article is cloſed with the great Deficiencies that have happened with regard to the Effects of the Suitors.

But, my Lords, give me leave to ſay, if that Deficiency have not happened by any fault of mine; if thoſe Misfortunes, which have befallen ſome of the Maſters, be not owing to any Crime in me; no part of all that is charged in this Article, ought in Juſtice to lie at my door. As I have obſerved before, the great danger, which was at firſt apprehended, and ſo often talked of by Mr. *Lightboun*, related only to the Securities, which the Maſters had in their hands; but that which hapned related to the Mony only. And tho' this Accident fell out, whilſt I had the Great Seal, yet it might as well have happened in my Predeceſſor's time, ſince nothing that I have done has given the leaſt occaſion to it.

But is there at laſt, any Deficiency made out to be in theſe Maſters, by which the Suitors are to be Sufferers?

Mr. *Thompſon* has been called as a Witneſs to prove theſe Deficiencies; but he has only ſhewn an Eſtimate of *Borret*'s Deficiency, and that ſome of the preſent Maſters had not paid in their Ballances at ſuch a time; and how much the further Sums they were to pay amounted to.

But have the Suitors therefore loſt the Mony? No, my Lords, that does not appear; but on the contrary,

Mr. *Conway*, one of them, and whom they have themſelves produced as a Witneſs, has ſworn, that he has aſſigned an Eſtate ſufficient to pay all his Deficiency.

One of the Managers was pleaſed to own that he meant by Deficiencies, the Mony not yet paid in, nay the Mony not paid in at the time of making the Orders read; and did admit, that ſince thoſe Orders, there had been Satisfaction or Security for the moſt part.

But, my Lords, it is the Loſs of the Suitors, that alone can give ground to complain.

The Order concerning Mr. *Tho. Bennet* mentions his Deficiency to be only 7500 *l* and 1575 *l* repreſented by him to be in the hands of his Predeceſſor and me.

The latter Sum of 1575 *l* is brought into Court. And we have ſhewn that Mr. *Hiccocks*, his Predeceſſor, has petitioned, that he may pay in the 7500 *l* which is the whole Deficiency. And here appears a conſiderable Eſtate, of I think 750 *l per ann.* of Mr. *Bennet*'s beſides.

Mr. *Kinaſton*'s Deficiency is repreſented to have been before *Chriſtmas* 26,908 *l* 11 *s* 3 *d* ¼; ariſing all, but what he ſaid was in my hands, and the hands of Mr. *Rogers* his Predeceſſor, only hence, that his Caſheer was dead inteſtate, and Adminiſtration diſputed; and ſo he could not come at the Mony.

There is paid in by me - - -	1575 *l*		
There is offered to be paid by Mr. *Rogers*, and will be paid - - - - - - - - -	6000		
A Debt from Mr. *Delahay*, which he ſwears a juſt one, is aſſigned - - - -	20,850		
In all	28,425		
And the Deficiency being computed at - - - - - -	26,908	11	3¼
This exceeds it in the Sum of	1516		

And he has an Eſtate of between 4 and 5 hundred Pounds a Year, and Timber of the Value of 2500 *l* to make good any part that may not be got from *Delahay*'s Eſtate, tho' his Effects

fects are in one of the Reports mentioned to have been then found to be in *London* alone above 20,000 *l.* And I have heard that the Lords Commiſſioners have ordered them to be brought into Chancery, and that 16 or 18 thouſand Pounds are actually brought in.

What is ſaid to be Mr. *Borret*'s Deficiency, is the foot of an Account, which the Report that repreſents it, and Mr. *Thompſon* in his Evidence, ſay could not be properly taken.

And when fully examined into, there may come out to be no loſs there neither. Mr. *Godfrey* ſwears Mr. *Borret* to have been in good Circumſtances when admitted; to have an Eſtate; to have ſold an Office for, I think, 5000 *l* upon the occaſion of his coming in Maſter; to have lived with ſmall Expence, his Wife's Father maintaining his Family. And, as he enjoyed the Office four Years, there can be no great Deficiency, and probably will be none at all.

But, my Lords, it is extremely hard upon me, if by their producing an uncertain Eſtimate, I am to be obliged to ſtate the Accounts of one, who is dead, whoſe Adminiſtrator is Sollicitor againſt me, without their ſearching into his Papers and Affairs, and giving a perfect Account how they ſtand. It is exceeding hard, give me leave to ſay, that your Lordſhips ſhould be judging upon me as Criminal, from Facts of this kind, to which I am an intire Stranger, when there is nothing like proof, that there will be a farthing Deficiency at laſt, but only that the Mony is not yet come in.

I beg leave to obſerve one thing more, That the Maſters, that are now called the deficient Maſters, are not one of them in Cuſtody; though it is made an Article againſt me, that I did not commit Mr. *Dormer*, who was in *Holland*. Therefore, ſince they are at Liberty, it muſt be taken for granted, that the Lords Commiſſioners had good Reaſon not to commit them; and yet their Deficiency, which is not a Crime in them, ſufficient to juſtify the committing them; is to be made a Crime in me, ſufficient to ſupport a Charge of High Crimes and Miſdemeanors. Your Lordſhips ſee how far this ought to affect me; and I ſubmit, upon what I have ſaid, whether it can ſupport the Charge in this Article.

XIX. As to the 19th Article, which relates to what was done about taking the Accounts: It charges,

" That whereas his moſt ſacred Majeſty, out " of his Fatherly Goodneſs to his People, did in " or about the Month of *November* laſt, direct " an Enquiry to be made into the Accounts of " the Maſters of the ſaid Court of Chancery, " to the Intent that proper Methods might be " taken for the Security of the Suitors of the " ſaid Court; the ſaid *Thomas* Earl of *Macclesfield*, being then Lord Chancellor of *Great Britain*, and one of his Majeſty's moſt Honourable Privy Council, in order to obſtruct the ſame, and to prevent a Parliamentary Enquiry into the State and Condition of the Offices of the ſaid Maſters, in Breach of the ſeveral great Truſts repoſed in him, did give Advice and Encouragement to the ſaid Maſters to aſſiſt and ſupply each other with Mony and Effects, and did repreſent to the ſaid Maſters, that it would be for their Honour and Service, to appear able and ſufficient; and that if they made a bold Stand now, it might prevent a Parliamentary Enquiry, or to that Effect; and did perſuade ſeveral of them to make falſe Repreſentations of their Circumſtances to his Majeſty, by adding a Subſcription to their reſpective Accounts deliver'd to the ſaid Earl, to be laid before his Majeſty, to the Effect following (*viz.*) That they were able to anſwer the Mony and Securities in their Hands, and were willing to pay the ſame to ſuch Perſons as were entitled thereunto, although the ſaid Earl knew, or had good Reaſon to believe, that ſeveral of the Maſters were not then able to anſwer the Ballance of their Accounts, nor are they yet able to ſatisfy or make good the ſame; and when the ſaid Maſters were afterwards required to produce the Caſh and Effects of the Suitors in their Hands, ſome of the Maſters, according to ſuch Advice and Encouragement given by the ſaid Earl, did ſupply others of them with Caſh and Effects, to make a falſe Shew and Appearance of their Ability and Readineſs to anſwer the Ballance of their Accounts.

My Lords, the two things, which are made the Heads of the Charge in this Article, relate to the Subſcriptions of ſome of the Maſters written under their Accounts; that they were able to make good the Ballances; and their afterwards producing Caſh, to make a falſe Shew and Appearance of their Ability. As to the firſt; I take it, that the material Part of the Charge is, that I *perſuaded* them to make *falſe, Repreſentations* of their *Circumſtances* by a *Subſcription*, which I *knew, or had good reaſon to believe, was falſe.*

As there is not the leaſt Proof offered that I knew or had reaſon to believe the Subſcription falſe, this Charge I think intirely falls to the Ground.

Upon the Proof attempted to be made, I think it appears, that when Mr. *Holford* brought in his Account purſuant to my Order, he (without my knowing any thing of it) had wrote a Subſcription at the End of it, to this Effect, " I " have all theſe Securities ſtanding in my Name, " as in this Account is ſpecify'd, and will procure Certificates from the proper Offices, " that I have and had them before this Account, " if your Lordſhip require it, and as to the " Mony, I am ready to give your Lordſhip Satisfaction to a Demonſtration, that I have it in " my Power to anſwer it to every Perſon, that " ſhall appear to be intitled to it, and who can " give me a legal Diſcharge."

They ſay, I read it, and ſpoke of it with Approbation.

There were only Part of the Maſters ready with their Accounts; and Mr. *Lovibond* was the next, that delivered me his, and he had wrote to the ſame Effect in Subſtance; only as to the Caſh, he wrote that he was ready to give Security.

My

My Lords, Every body knows that he was able to anſwer it; and he ſwears he had it ready, and was able to have paid it the next Day; and he appears to have lent 10,000 l. to a Brother Maſter on that Occaſion. I was therefore ſurprized to ſee him make uſe of an Expreſſion, which looked as if he were not able to pay the Money. And upon that it was, that he ſays, I recommended to him to make uſe of the ſame Expreſſion, as had already been uſed by Mr. *Holford*; and ſo accordingly he did.

Thomas Bennet had ſubſcribed, before he came, thus, "I have all the Securities ſtanding in my "Name as in the within Account are ſpecified, "as alſo the Tallies, Orders, and Bonds in my "Cuſtody;" but had ſaid nothing of the Money: He ſwears, that I ſaid, I wiſhed all would make uſe of the ſame Form as Mr. *Holford* had done: And that it would be for their Honour and Service to appear able and ſufficient. He ſays, that Mr. *Lightboun*, as I remember, asked what was the Meaning of bringing it before the Committee? and that I ſaid, it would be a Means to prevent a Parliamentary Enquiry; that I did not ask him whether he was able, but directed him to write; I ſuppoſe he means by the general Direction; for I do not apprehend he ſays, that I ſpoke it to him in particular: And it is not pretended, that he made the leaſt Scruple of ſigning it as true, or expreſſed any Backwardneſs in it; and he in Effect owns he did not. But he informs your Lordſhips how extremely tender he was, not to write any thing but what was ſtrictly true; and that therefore, in his Subſcription, he took Care to leave out the Words *to a Demonſtration*, which are in Mr. *Holford*'s. And Mr. *Holford*'s Subſcription running, "*And as to the* "*Money, I am ready to give your Lordſhip Satiſ-* "*faction TO A DEMONSTRATION that I have* "*it in my Power to anſwer it to every Perſon that* "*ſhall appear to be intitled to it*, &c." Mr. *Bennet* could not come quite up to this; but he ſubſcribes, "*And as to the Money, I am ready to* "*give your Lordſhip Satisfaction, that I am able to* "*anſwer it to every Perſon that is intitled thereto.*" This therefore, that he has ſubcribed, is, I ſuppoſe, if he is to be credited, *exactly true*: And if ſo, I have not perſuaded *him to make a falſe Subſcription.*

Mr. *Kinaſton* ſays, it was *recommended* to them by me to make ſuch a Subſcription as Mr. *Holford*'s; that I ſaid, it would look well to the Council, and prevent farther Enquiry or Parliamentary Enquiry, or ſome other Enquiry, he knows not which; ſo he comply'd. But, my Lords, his Subſcription is not what I recommended. Mr. *Holford* only undertakes to ſhew he had it in his *Power to anſwer* the Money, &c. that is, that he either had the Money, or Effects, which being diſpoſed of, would raiſe it. But Mr. *Kinaſton* goes farther, he ſays, I am ready *to pay it* to the *Perſons intitled.*

Mr. *Lightboun* heard nothing ſpoken of the Subſcription; he went away to finiſhh is Accounts, which were not compleat.

Mr. *John Bennet* was not there; but at his coming, being told what I had ſaid to the others, he, without Scruple, ſubſcribed, without my ſpeaking to him.

Mr. *Edwards* ſays he was able to pay it.

Mr. *Lovibond* was called laſt; but I before gave an Account what he ſaid.

So that of the ſix Maſters who made Subſcriptions, I ſpoke only to five.

Three of them have proved themſelves able; and I believe no body doubts it.

Mr. *Thomas Bennet* made no Objection, or Difficulty, and has been curious not to let his exceed the Truth.

Mr. *Kinaſton*, has voluntarily gone beyond what I deſired. And I make no Queſtion but he thought himſelf *able* to anſwer it, though I doubt his being *ready.*

But is there the leaſt Evidence offered, that I knew Mr. *Kinaſton* and Mr. *Thomas Bennet* were not able, or had Reaſon to believe or ſuſpect it? No, on the contray, Mr. *Lovibond*, their own Witneſs, who is one of the Maſters, and converſant among them, told your Lordſhips upon his Oath, that by their Converſation he believed they were able to make good their Accounts.

In the mean time, your Lordſhips obſerve, that theſe deficient Maſters had all their Securities ready, and voluntarily ſubſcribed ſo to their Accounts, without my ſpeaking to them. In which Point Mr. *Lightboun*, under the laſt Article, thought there was the moſt Danger.

As to the Words, *That it would be for their Honour or Service to appear able and ſufficient*;

I will not be poſitive as to the Words, whether it were *to appear able*, &c. or *to make appear that they were able*, &c. In a fair Conſtruction, the Senſe of the firſt is the ſame as the latter.

When Mr. *Holford* ſubſcribes, That he is able to pay to every Perſon, who ſhall *appear* to be intitled; or, if I ſhould ſay, Mr. *Thomas Bennet appears* not ſo fair or able a Man, as I formerly thought him; does it import only a falſe Shew?

As for what is ſaid of *preventing a Parliamentary Enquiry*,

Mr. *Thomas Bennet* repreſents it to be ſpoke in Anſwer to the Queſtion, What was the Meaning of bringing it before the Committee? And ſays, my Anſwer was, That it would prevent a Parliamentary Enquiry.

If I ſaid it, the Reaſon is obvious, and the Thing innocent.

It is notorious, that the laſt Summer there was a great Clamour againſt Maſters in Chancery, which was heightned by ſome Diſputes they cauſed in the Court of Chancery; that it was generally believed, that it would come into Parliament; and I am perſuaded it would have come into Parliament ſomething ſooner, if the Committee of Council had not taken this Matter into Conſideration.

I am likewiſe perſuaded, that had the Maſters all been able to make good the Money in their Hands, and proved that they were ſo; and that they had behaved themſelves well; and that the Lords of the Committee, after finding their Accounts Right, had proceeded to adviſe proper Regulations, the Matter would never have come into Parliament with Reſpect to them, whatever it might as to me.

And as to them, I believe, they were not deſirous to have the Matter in Parliament, becauſe of the vaſt Trouble it muſt give them, had there been nothing elſe in it. And it was natural for me to think, that nothing would more tend to

make them eaſy, in complying with what the Committee ſhould think fit, than by letting them know, that if it gave them Trouble in one reſpect, it would eaſe them more in another.

And ſo far I thought it for the King's Service, and my Duty, to haſten the Accounts before the Council, and to uſe all Means I could to have things carried on with Speed and Effect; that ſuch Members of Parliament, as had their Eyes on this Affair, might plainly ſee that proper Meaſures were effectually carrying on by the Lords; ſo that there would be no Occaſion to take up this Affair in Parliament, or for the Legiſlature to interpoſe.

But as to my own Share, I freely own I had not the leaſt Apprehenſion of what has ſince befallen me.

I was ſo far from obſtructing the taking theſe Accounts, that Mr. *Holford* has informed your Lordſhips, that when the firſt Order was ſuch, as would require a very long Time to be complied with, I preſſed them not to make uſe of that as an Excuſe for Delay, but to bring in an Account of their preſent Ballances, and to let the Lords know the Reaſon, and then to ask Time for more perfect Accounts, if ſuch ſhould be required; which were not.

As to their making a *falſe Shew* of Caſh *purſuant to my Advice and Encouragement*,

They have not offered a Word of Proof of any Thing ſaid or done by me, or by my Order, concerning any Part of that whole Affair; if they had, I am ſure, whatever had appeared to be done by me, would at the ſame Time have appeared not capable of the Conſtruction in the Article.

But inſtead of that they have given a confuſed uncertain Account of ſomething, that paſſed between Mr. *Cottingham* and the Maſters; but never called Mr. *Cottingham* to bring it Home to me, nor any way ſhewn that I knew any thing of it, either before or after. Nor do I really underſtand it at laſt. I do not apprehend that Mr. *Cottingham* adviſed them to furniſh one another with Money, but upon good Security; nor did they do it. Nor do I ſee, what harm it is, if a Maſter, having Occaſion for Money, borrows it of another Maſter, upon good Security.

The only Perſon that they ſeem to fix any Fraud upon, is Mr. *Conway*; and, which appears very odd, only by his own Evidence; and yet he ſeems to juſtify himſelf too.

But if not; there is no Proof, nor Ground of Suſpicion, that I was any way privy to it, or aſſiſting in it, or that I had any the leaſt Share whatſoever in it:

And therefore I am not Guilty.

XX, XXI. On the 20th and 21ſt nothing has been offered.

My Lords, I have now gone through all the ſeveral Articles, that have been *endeavoured to be ſupported* againſt me; and I think I may ſay as I did in the Beginning, that except thoſe relating to the Diſpoſal of Places, which are of another Kind and another Conſideration, all the reſt muſt, to be made criminal, turn upon that Aggravation in the Articles, from my *inordinate, wicked, and corrupt Deſigns of procuring to myſelf exceſſive and exorbitant Gains and Profits by divers unjuſt and oppreſſive Practices after mentioned.*

It is ſuch a *corrupt Heart* only can change Actions, that in themſelves are innocent, and ſome of them perhaps commendable, into ſo many Crimes.

And yet it is very extraordinary, and ſcarce poſſible to be conceived, but that if there had been ſuch a corrupt Heart, it muſt have broke out upon ſome other Occaſion of my Life. Not one inſtance of my whole Life has been yet produced to ſhew it.

Several of thoſe under me have been examined; ſeveral Officers immediately attendant on me, that received conſiderable Profits and Salaries, to the amount of Three or Four Thouſand Pounds *per Annum*, and more; If I had ſet my Heart upon Gain, a certain Profit might have been there yearly made, amongſt thoſe whom I had wholly at Mercy, and in private. But there has no Appearance been found of any thing of that Kind: And is it not more likely that I ſhould have laid hold of a certain Profit, than be laying Schemes for Advantages upon the uncertain Contingency of the Sales of Maſters Offices.?

The Value of ſuch an Expectation is a mere Trifle; and with Reſpect to the Probability of its happening, it was exceeding uncertain whether I ſhould have an Opportunity of putting in one ſingle Maſter.

Three Maſters have happened to dye in my Time; and two of thoſe in leſs than the Space of a Year: But I think not one in nine Years before.

My Lord *Cowper* admitted but one in the laſt Time of his being Chancellor, which was four Years; and that was upon a Surrender.

There are 24 Curſitors; only one has dyed in my Time: 30 Commiſſioners of Bankrupts; only one dyed in above ſix Years.

Surrenders of the Offices of Maſters are rarely till after 16 or 17 Years, ſometimes 30 or 40 Years Enjoyment.

My Life was very uncertain: The Office of Chancellor much more ſo.

Little therefore was to be hoped from the Profit to be made by Maſters Places.

My Lords, in the next Place, I apprehend, that it appears I did not take the Advantage I might have taken.

When the Time came for me to reap the Fruit of all my Contrivances, all thoſe Schemes and Stratagems, the Work of above three Years, (a great Space in the Time of a Chancellor) ſee, whether there be the leaſt Mark or Symptom of this impotent Deſire of Gain!

What I did, proves, beyond all Contradiction, that I never had any ſuch Views, as theſe they lay to my Charge.

I took not the Advantage I might have done; I took a leſs Sum, when a greater was offered; and Part of the Money was returned again to Mr. *Elde* and Mr. *Thurſton*. And when Mr. *Thurſton*'s Money was returned, only for being more than it was expected to be, every thing was in the ſame State as when it was paid.

And poſſibly your Lordſhips will think, from ſome other Evidence given, that amaſſing a great Eſtate was never my View; and that rapacious and baſe Ways of getting Money are not conſiſtent with my Way of laying it out.

As this is a full Anſwer to the Charge of my Deſire of Gain; and the whole *Malignity* of *all I* am charged with ariſes from that ſuppoſed Principle of my Actions; without this, though there ſhould have been Imprudence, Indolence, too

great

great Confidence, perhaps Credulity, Irresolution, or any other Defect or Weakness, there has been nothing wicked.

And, if your Lordships are satisfied of this one Thing, I apprehend the Sting of this Impeachment is taken out.

My Lords, Having thus gone through all my Observations, it may possibly be expected I should close them with offering something in General. But I think it properer to forbear.

I am not conscious to my self, that it is necessary in this Case to apply to the Passions; which is a common Artifice to assist a weak Defence. If I have done any publick or private Good (of which last some Specimen has been laid before your Lordships) it will, I am confident, have its full Weight.

I submit my whole Life and Conduct to your Lordships Judgment; and rely entirely upon your Justice for my Acquittal.

Mr. *Plummer.* My Lords, I am not going to make any Observations upon this Speech; neither did I interrupt the Lord in making it. But one thing I am to say for Form Sake: We produced to your Lordships a Copy of a Letter writ from Mr. *Lightboun* to my Lord, he hath now read the Original Letter; I desire that the Original may be delivered into Court, that we may have the Perusal of it.

E. *of Macclesfield.* I believe the Gentleman is perfectly in the Right of it. It is here.

The House adjourned to *Friday* Morning next, at Ten a-Clock.

Friday May 21, 1725. The Tenth Day.

THE Lords being seated in their House, the Serjeant at Arms made Proclamation for Silence: As also the other Proclamation, That all Persons concerned were to take Notice, that *Thomas* Earl of *Macclesfield* now stood upon his Tryal, and they might come forth in order to make good the Charge.

Ld. Ch. Jus. *King.* Gentlemen of the House of Commons you may proceed.

Mr. Serj. *Pengelly.* My Lords, The Part assign'd to me in this Impeachment against the Earl of *Macclesfield*, is to reply to his Defence upon the *Fifth*, *Sixth*, *Seventh*, *Eighth*, *Ninth*, *Eleventh*, *and Twelfth* Articles.

Before I enter into the particular Examination of the Objections made against the Charge of the Commons contained in these Articles, and of the Matters alledged, either in Justification, or Excuse of the Lord Impeached; I shall take the Liberty of observing,

That your Lordships are now exercising a Power of Judicature, reserved in the original Frame of the *English* Constitution, for the Punishment of Offences of a publick Nature, which may affect the Nation; as well in Instances, where the Inferior Courts have no Power to punish the Crimes committed by the ordinary Rules of Justice; as in Cases within the Jurisdiction of the Courts of *Westminster-Hall*, where the Person offending is, by his Degree, raised above the Apprehension of Danger, from a Prosecution carried on in the more usual Course of Justice; and whose exalted Station requires the united Accusation of all the Commons of *Great-Britain*, by their Representatives in Parliament.

This High Jurisdiction may be exercised for the Preservation of the Rights of the Lords and Commons, against the Attempts of Powerful Evil Ministers, who depend upon the Favour of the Crown;

Or, it may be put in Execution for the Ease and Relief of a good Prince, whose Honour has been betray'd by a corrupt Servant; and yet, whose Clemency makes him unwilling to punish; so that it becomes necessary for his faithful Commons to take into their Care the prosecuting such an Offender.

Former Reigns have supply'd your Journals with many Examples of the first Kind.

The present Reign produces an Instance of the latter Sort, wherein the Commons bring before your Lordships in Judgment a Peer offending, with the greatest Ingratitude, against a most just, and most merciful Sovereign.

For, The King's Royal Munificence bestowed upon this Earl, in the most abundant Measure, could not exempt the Inferior Officers from his Exactions, nor protect the Suitors and their Properties in the King's own Court of Chancery.

The general Crime charged upon the Earl, in *Five* of these Articles, is *Extortion by Colour of his Authority as Lord Chancellor.*

The Offence alledged in the other *two* Articles, is *gross and wilful Negligence in his Office, to the great Damage and Loss of the Suitors of the Court, but to his own private Gain and Advantage.*

The particular Exactions are his taking *One Hundred and Five Pounds* from Mr. *Thomas Bennet*, for accepting the Resignation of the Office of *Clerk of the Custodies* in the Court of Chancery, in order to obtain a New Grant to Mr. *Hugh Hamersley*, and procuring the same to pass the Great Seal accordingly.

His exacting *Fifteen Hundred Guineas* from Mr. *Kinaston*, for the admitting him to be a Master of the Court of Chancery, upon the Resignation of Mr. *Rogers.*

His exacting the like Sum of *Fifteen Hundred Guineas* from Mr. *Thomas Bennet*, for the admitting him to be *a Master* of the same Court, upon the Surrender of Mr. *Hiccocks.*

His exacting the Sum of *Five Thousand Guineas* from Mr. *Elde*, for the admitting him to be *a Master* of the same Court, upon the Death of Mr. *Fellowes.*

His exacting the like Sum of *Five Thousand Guineas* from Mr. *Thurston*, for the admitting him to be *a Master* of the same Court, upon the Death of Mr. *Borret.*

The last Article relating to Mr. *Thurston* is charged with this Aggravation, *That the former Master was Dead Insolvent, greatly indebted to the Suitors of the Court; and that the Earl did not secure a just Satisfaction to the Suitors.*

And the Exaction of the *One Hundred and Five Pounds* from Mr. *Thomas Bennet*, is alledg'd to be done when the Earl was *one of the Lords Justices.*

These Misdemeanors, as well as all the other Offences, of which the Earl is now accused, were committed by him *whilst he executed the Office of Lord Chancellor.*

From whence the Earl and his Council take Occasion to make a Triumph upon the supposed Justice and Regularity of his Administration and Conduct, when he presided in the Court of King's Bench; because the Commons have not produced any Misbehaviour in the Execution of

of that Office wherewith to furniſh out an Article againſt him.

This may be an Inſtance of the Lenity of the Commons, but it is no Proof of the Earl's Innocence; who beſt knowing his own Behaviour, declines to abide the Examination of his Actions during the ſix Years of his Continuance in the Office of Lord Chancellor;

But flies to a Sanctuary for Indemnity and Diſcharge; which ſhews, that the Earl eſteem'd himſelf more ſecure under Shelter, than upon a Juſtification of his Conduct.

And the Succeſs of the Commons, in the very ſtrong and full Evidence, which they have laid before your Lordſhips in Maintenance of thoſe Articles, upon which they have proceeded, leaves very little Reaſon to imagine that they would have fail'd in their Proof, if they had extended their Inquiry into his former Life, or had enter'd into the reſt of the Articles.

And after the ſtrict and long Examination of Witneſſes, which has entertain'd your Lordſhips for ſo many Days, I may venture to ſay, that the Conſiſtency and Uniformity of the Proof given in Support of the Accuſation of the Commons, upon ſo many different Heads, are ſufficient to convince all the World of the Neceſſity, which there was, for the Honour of the King, and the Welfare and Satisfaction of the Nation, to carry on the preſent Proſecution;

And I hope, have already fully ſatisfied your Lordſhips of the Truth and Juſtice of the Commons Impeachment.

But as there have been ſeveral Objections made on the Behalf of the Earl impeach'd, as well to the Foundation of the Charge it ſelf, and to the Event and Conſequence of it, as to the Sufficiency of the Evidence of the Facts alledged; it will be neceſſary for me to give an Anſwer to theſe Objections, and to maintain the Charge in theſe Reſpects; which I ſhall proceed to do by ſhewing, that *the Impeachment is well founded*, and that *the Facts in the Articles* before ſtated *have been plainly and fully prov'd*.

The Earl himſelf began with inſiſting, That his General Oath of Office has no Relation to the Offences charg'd; and that no Inference can be made to his Prejudice from the Tenor of that Oath.

But the Earl's Remembrance, or Explanation of his Oath, is very defective; he has ſet it out at large in his Anſwer, and thereby he ſwears, that *He will well and truly ſerve the King and his People in the Office of Chancellor, and do Right after the Laws and Uſages of this Realm*; which comprehends the Obſervation of every thing, which is Part of the Duty of, or incident to his Office,

And the avoiding of every illegal and unjuſt Action in the Execution of it.

And the Omiſſion of any Part of his Duty, or the Commiſſion of any Offence againſt the Duty of his Office, is a Breach of this Oath of Office, altho' the Particulars are not enumerated in the Oath; and the contrary Opinion will open a Door to the Commiſſion of all Manner of Injuſtice and Rapine by Civil Officers.

The Earl likewiſe relies upon it, That the whole Charge turns upon his wicked and corrupt Intent and Views alledg'd in the Introduction, which (as he ſays) have not been made appear;

But theſe will be apparent from the Proof of the ſeveral Facts charg'd; which, if they are unlawful and unwarrantable, and do tend to the raiſing Money by corrupt and extorſive Meaſures, will manifeſt that Intent, and prove it as ſtrongly as if he had declared his Deſigns in open Court; for ſuch Acts cannot be done with a good and honeſt Intention.

The main Objection againſt the Articles is, That there is no Matter of a Criminal Nature contained in the Money Articles; or if there is a Crime, yet that there is no Puniſhment annexed or incident to it, which your Lordſhips can now inflict upon the Earl, after he is removed from his Office.

In anſwer to which I ſhall inſiſt, That,

The Earl's ſelling theſe Offices, or diſpoſing of them for Money taken by him before the Admiſſion of the ſucceeding Officers in the Manner alledged and prov'd, is an Offence at the Common Law, and puniſhable by Fine and Impriſonment, upon Indictment or Information; as well, where the Money was taken for an Admiſſion upon a Reſignation, as upon a Death.

To make out this, it muſt be conſider'd, That

The King having the executive Power, or the Adminiſtration of Ordinary Juſtice, lodged in Him, is in Conſequence obliged to provide and appoint capable and ſufficient Officers, neceſſary for the due Execution of Juſtice, in his ſeveral Courts, for the Benefit of His Subjects; His Coronation Oath proves this.

And accordingly the Crown has always paid the Salaries or Fees of the Lord Chancellor, and other principal Officers of Juſtice, and alſo of many inferior Miniſters, out of the Royal Revenue; and other ſubordinate Miniſters were maintain'd by the chief Officer, to the End that the Subject ſhould not be expoſed to Exaction or Oppreſſion, under Pretence of any Demand of Fees or Reward by the Miniſters of publick Juſtice for the Execution of their Offices; which is the Source of all that Corruption, which at any Time ſprings up in the Courts of Juſtice.

The Antient Law of *England* was, that none having any Office concerning the Adminiſtration of Juſtice, ſhould take any Fee or Reward of any Subject for the doing of his Office, to the End he might be free and at Liberty to do Juſtice. *Stat. Weſtm.* 1. cap. 10. *A.* 3 *Ed.* 1. *Co.* 2. *Inſt.* 176, 209, 210. *Co.* 3. *Inſt.* 145, 147, 148.

And ſeveral Charters of former Kings, and Statutes declaratory of the Common Law in that Reſpect, have been made to inforce the due Obſervation thereof, as,

Stat. Weſtm. 1. 3 *Ed.* I. c. 26. 20 *Ed.* III. c. 1.

My Lord *Coke*, 3 *Inſt.* 146. ſays, the 20 *Ed.* III. c. 1. is only a Commandment of the King; and that there is no Record of any ſuch Act in any Parliament Roll, and yet neceſſary to be printed, becauſe the 4*th* Chapter of this Parliament refers to the Pains contained in it. *Co.* 2. *Inſt.* 74, 176, 209, 210.

Yet, if it be only the King's Charter, it is a Declaration of the Common Law at that Time; but it is printed in Old *Raſtal's* Edition of *Statutes*, Fol. (89) and in all the reſt of the printed Statutes.

20 *Ed.* III.

Co. 3. *Inſt.* 224, 225.
Co. 3. *Inſt.* 146, cap. 68. *of Bribery, Extortion,* &c.

20 *Ed.* III. cap. 6. and more particularly the Act of 11 *H.* IV. *Rot. Parl. Num.* 28. by which it is enacted,

Item, *Que null Chanceller, Treſorer, Gardein de Prive Seal, Counſeller du Roy,* * *ſerementez a Counſeil du Roy, ne null autre Officer, Judge, ne Miniſtre du Roy, pernant Fees ou Gages de Roy, pur lour ditz Offices ou Services preigne en null Menere en Temps avenir aſcun Manere de Done ou Brocage de nully pour lour ditz Offices et Services, a faire ſur Peyn de reſpondre a Roy de la Treble de ceo qe iſſi preignont, et de ſatisfier la Partie et punys al Voluntes de Roy, et ſoit diſchargez de ſon Office, Service, et Counſeil pur toutz jours,* &c.

Item, *That no Chancellor* (this High Officer is mention'd in the firſt Place by Name) *Treaſurer, Keeper of the Privy Seal, Councellor of the King,* * *ſworn of the King's Council, nor no other Officer, Judge, nor Miniſter of the King, receiving Fees or Wages of the King for their ſaid Offices or Services, take in no Manner in Time to come, any Manner of Gift or Brocage of any Perſon for doing their ſaid Offices and Services, upon Pain to anſwer to the King the Treble of what they ſo take, and to ſatisfy the Party, and to be puniſh'd at the King's Pleaſure, and ſhall be diſcharg'd from his Office, Service, and Council for ever,* &c.

* *N. B.* The Printed Books have miſtaken this Word

This Statute is enter'd on the Parliament Roll of that Year, amongſt the Records in the Tower; it is not indeed enter'd on the Statute Roll: But the Parliament Roll is the Original, and is the Warrant for the Statute Roll, and is therefore of greater Authority.

In the Margin of the Roll is enter'd thus, *viz.*

Reſpectuatur per Dominum Principem & Conſilium.

For which Reaſon my Lord *Coke* ſays it was never printed in the Book of Statutes, of which he highly complains; and therefore has recited it at large, and cauſed it to be printed in his 3*d. Inſt.* Fol. 146. c. 68. *of Bribery, Extortion,* &c. and c. 101. *of Judgements and Executions,* Fol. 224, 225. which is one of the firſt Books, relating to the Crown Law, read by the Students of the Law, and was thus publiſhed by that great Man to impreſs an early Abhorrence of every thing which may tend to Exaction and Extortion; and muſt have often come under the Conſideration of the impeach'd Lord.

Theſe Statutes have indeed been opened, and alter'd by ſubſequent Statutes, as to ſeveral inferior Officers; and ſome ſmall Fees have been antiently allow'd, and permitted in particular Caſes; but it has been obſerv'd, that from ſuch indulgences many Oppreſſions of the People have enſued.

Co. 2. *Inſt.* 74, 209, 210.

But the Common Law, and the ſeveral Acts of Parliament before mention'd, do not only ſtill remain in Force, with reſpect to the Lord Chancellor, but have been confirm'd and inforced by other Statutes.

And the Great Charter of our Liberties, *Magna Charta,* c. 29. *Co.* 2. *Inſt.* 55, 56. does imply this,

Nulli vendemus Juſtitiam aut Rectum;

which according to my Lord *Coke*'s Comment, *Is ſpoken in the Perſon of the King, who in Law is preſent in his own Courts of Juſtice, and repeating theſe Words, which* (ſays He) *extend to the End, which is Juſtice, and to the Mean, whereby Juſtice may be attained, which is the Law;* or, as it muſt be underſtood, the Adminiſtration of the Law by the Officers of Juſtice; unleſs it can be ſuppoſed, that the Statute provides againſt the leſſer Evil, but allows the greater Miſchief; that it prohibits the Sale of a particular Decree or Order, which may be right and juſt in it ſelf;

But leaves the King's ſuperior Officer at Liberty to ſell the whole Body of the Suitors of the Court in the Groſs, to the Exaction and Oppreſſion of the under Officers, in the Fees which they ſhall demand againſt Law and Right.

So that if the Earl impeach'd had exemplified this Rule of my Lord *Coke* in the Court of Chancery, where he immediately repreſented the King's Royal Perſon; and once in a Term ſitting in Court between his Maſters, who paid for their Places out of the Suitor's Effects, had repeated to the Suitors this glorious Declaration,

Nulli Vendemus Juſtitiam;

He muſt have made a very inconſiſtent Figure, in the Opinion of the meaneſt Capacity.

It will then be plain, That as to ſuch Offices, which are in the immediate Gift and Diſpoſal of the Crown, they cannot in their own Nature be ſaleable, or diſpoſed of for Money; becauſe the King himſelf cannot be ſuppoſed to ſuffer them to be put to Sale.

And the Miniſters of the Crown, who have no immediate Right in the Office; and are only to execute and confirm the King's Pleaſure in the Diſpoſal of the Office, cannot ſell that which is not their own;

Nor ought, or can they lawfully take any Fee, or Reward, for accepting Reſignations, or making new Grants, or Admiſſions into Places, or for conferring inferior Offices, with which they are intruſted by Virtue of their own Office; which would be the taking Money, for the doing of their Office, contrary to the Law, and the before mentioned Statute.

But there is another very good Act of Parliament, which has been read at your Lordſhip's Table, and proves this Practice of ſelling ſuch Offices, to be an Offence at the Common Law, *viz.* the

Co. 1. Inſt. 134. *a*
Co. 3. Inſt. 145. 147, 148.

12 *Rich.* II. c. 2. Intituled, *None ſhall obtain Offices by Suit or for Reward.*

Item, *It is accorded, that the Chancellor* (by expreſs Name) *Treaſurer, Keeper of the Privy Seal, Steward of the King's Houſe, the King's Chamberlain, Clerk of the Rolls; the Juſtices of the one Bench, and of the other; Barons of the Exchequer, and all other that ſhall be called to ordain, name, or make Juſtices of the Peace, Sheriffs, Eſcheators, Cuſtomers, Comptrollers, or any other Officer or Miniſter of the King, ſhall be firmly ſworn, That they ſhall not ordain, name, or make any ſuch Officers, nor other Officer or Miniſter of the King for any Gift or Brocage, Favour or Affection.*

The Act proceeds farther in a different Form of Expreſſion, and to another Matter;

Nor, that none which purſueth by him, or any other, privily or openly, to be in any manner of Office, ſhall be put in the ſame Office, or any other; But that they make all ſuch Officers and Miniſters of the beſt and moſt lawful Men.

The Earl apprehended the Streſs of this Statute, and how much it preſſed upon him; and therefore has endeavour'd to diſtinguiſh himſelf, not only out of the Oath, but out of the intire Act, by objecting, that this Statute, and the Oath therein directed, only extend to ſuch Nominations as are made in the Nature of Elections, by an Aſſembly of all theſe great Officers and Miniſters, when they are called *together* for that End; which Word (*together*) is of his own inſerting, to ſerve his Purpoſe; as in the Caſe *of Sheriffs*, and not to their ſingle and ſeparate Nomination of Officers, in Right of their reſpective Offices, by themſelves.

This is the Earl's own Objection, and not of his Councel, and will (if allow'd) expound away the whole Act, in all the expreſs Inſtances mentioned in the Statute, ſave one;

For there is but one Officer named in the Act, who is nominated thus in an Aſſembly or publick Meeting, which is *Sheriff*; and all the reſt are ordain'd, and made by the great Officers ſeparately, in their own Right; as *Juſtices of Peace* by the Chancellor; and *Eſcheators, Cuſtomers, and Comptrollers* by the Lord Treaſurer.

And the reſt of the Words of the Act, *viz. Or any other Officer or Miniſter of the King*, will be totally expunged by this nice Interpretation.

But the Words plainly mean, that every one of theſe Officers, who by virtue of his Office ſhall be call'd (not call'd *together*) by Command of the Crown, or in Execution of his Office, to name or make any inferior Officer, ſhall be ſworn; for they never are all call'd together, unleſs on the Nomination of Sheriffs.

The Earl, for more Security, and for the ſake of better Company, objects farther; That the Argument from this Act and the Oath will go too far; for then they are ſworn not to prefer any *who make Suit or Application for any Office.*

But that is no Part of the Oath; and they are only ſworn ſo far as the Statute extends it, which is to the former Part; and this Clauſe in the Concluſion of the Act is only directory, and introduces a new Inſtruction to the great Officers, but does not carry on the Purport of the Oath; for the Words are, *It is Accorded, that the Chancellor* &c. (in the Affirmative) *ſhall be ſworn, that they ſhall not name*, &c. and the Sentence which follows is a new Clauſe, beginning with a Negative, *viz. Nor, that none which purſueth, &c. ſhall be put into any Office, &c.* and refers to the Perſon applying, and not to the Officer appointing.

So that this latter Part of the Statute ought to be obſerv'd; but the Officer is not required to be ſworn to the Obſervation of it.

This Statute takes it for granted, that the contrary Practice of naming ſubordinate Officers for Gift or Brokage was unlawful before at the Common Law; ſince it does not create or enact it to be an Offence, but provides an additional Conſtraint or Obligation upon the ſuperior Officer by an Oath, not to commit the Offence; and it ſtill remains an Offence at the Common Law, and don't depend on that Statute, but is a great Offence, altho' the Oath be not taken.

This Statute contains the moſt extenſive and general Words, and mentions Officers of many Sorts, and different Degrees, as well high, as low, relating to the Peace, publick Juſtice, and the Revenue; and that no Officer, of any Kind whatſoever, in the King's Service, nam'd or ordain'd by the great Officers of State, might eſcape or be omitted, the Act concludes the Deſcription with theſe Words; *Or any other Officer or Miniſter of the King;*

And therein manifeſtly comprehends both theſe Offices of *Clerk of the Cuſtodies*, and of *Maſters in Chancery.*

For this Statute refers to Officers who are only nam'd or recommended to the King by the Chancellor, &c. and yet are conſtituted by the King's Letters Patents, as *Juſtices of the Peace, and Sheriffs*, whereby the uſurped Fee for Recommendation is declared illegal; and alſo to other Officers, who are immediately conſtituted and appointed by the chief Officers, by Authority deriv'd from the King, and by virtue of the Truſt in them repoſed for the King's Honour and Service, and for the Benefit of his People, as *Eſcheators and others*; and thereby the other pretended Fee for Nomination is condemned.

Sheriffs and *Eſcheators* named in the Act, are Officers relating to the Adminiſtration and Execution of Juſtice; and *Eſcheators* more eſpecially, to Inquiſitions touching Idiots and Lunaticks, and the Commiſſions and Proceedings thereon; which is the chief Part of the Truſt and Office granted by the Letters Patents to Mr. *Hamerſley*, as *Clerk of the Cuſtodies*, and which was reſigned by Mr. *Thomas Bennet*; and it will appear by the Patent it ſelf, that this Office in the Court of Chancery, has a very near Relation to the Office of Eſcheator; and the Grant very fully deſcribes the Nature and Antiquity of this Office.

And as to the Nature and Antiquity of the Offices of *Maſters in Chanſery*, they appear fully from the Oath taken by every *Maſter* upon his Admiſſion, which is of the ſame Import and Effect, in many things, with the Oath taken by the Lord Chancellor himſelf, *viz.*

To ſerve the King and his People, and to counſel the things that toucheth the King; to prevent the Diſheritance of the King, or Fraud to his People; and not to diſcloſe the Counſel which he ſhall give

give touching the King; and to redreſs Damage or Fraud in the keeping the Great Seal, and to adviſe the Chancellor thereof, &c.

And alſo from the ancient Commiſſions produced and read, giving the Maſters Authority, by the Name and Deſcription of *Maſters of the Court*, to hear Cauſes, and make Decrees (in like Manner as the Judges Aſſiſtants) in the Abſence of the Chancellor; and to puniſh Contempts, and to do other like Acts of Juriſdiction; and likewiſe from the actual Exerciſe of their Offices in making Reports, and Taxation of Coſts, and the Manner thereof prov'd by ſome of the Maſters (and not contradicted) as that a *Subpœna* iſſues immediately upon the Maſter's Taxation of Coſts, without any Order or Confirmation of the Lord Chancellor; that their Reports in other Inſtances are turn'd into Decrees of Court, if not alter'd upon Exceptions, and from many Authorities in the Law Books.

By all which it is evident, that the Offices of *Maſters in Chancery* are judicial Offices, or Offices which partake of a judicial Authority and Nature; and do touch and concern the Adminiſtration and Execution of Juſtice in that Court; and that the *Maſters* are aſſociated for that Purpoſe to the Lord Chancellor, as alledged in the Articles.

But upon this Occaſion it will be proper to recite more particularly the Authority of the Statute of

A. 13. *Edri.* 1. call'd *Weſtm.* 2. cap. 24. *Et quotieſcunque de cætero evenerit in Cancellaria, quod in uno caſu reperitur breve, & in conſimili caſu cadente ſub eodem jure, & ſimili indigente Remedio non reperitur; concordent Clerici de Cancellaria in brevi faciendo, vel atterminent querentes in proximum Parliamentum,* &c. *& de conſenſu juriſperitorum fiat breve, ne contingat de cætero quod curia Domini Regis deficiat conquerentibus in Juſtitia perquirenda.*

Co. 2. *Inſt.* 405, 407. Thoſe here called *Clerici*, were at this Time, and before, called *Magiſtri Cancellariæ*, and were aſſociated to the Lord Chancellor; of whom *Fleta* ſaith,

Cui aſſocientur Clerici honeſti & circumſpecti, Domino Regi Jurati, qui in legibus & conſuetudinibus Anglicanis notitiam habeant pleniorem, quorum Officium ſit ſupplicationes & querelas conquerentium Audire & Examinare, & eis ſuper qualitatibus Injuriarum oſtenſarum debitum Remedium exhibere per brevia Regis.

The granting and iſſuing the Writ, or firſt Proceſs, upon the Prayer of the Plaintiff, or Party proſecuting, is the firſt judicial Act of the Court, upon the Commencement of a Suit.

And this proves ſtrongly, that the King by his Royal Office, confirm'd by this Act of Parliament, did at his own Expence, and not at the Charge of the Suitor, provide theſe *Clerks or Maſters*, to the End, that no Subject who had a Right, ſhould be without a Remedy in the King's Courts;

Ne curia Domini Regis deficiat conquerentibus in Juſtitia perquirenda.

And the Nomination of theſe *Maſters* is only intruſted with the Lord Chancellor, as repreſenting the King, and for the Relief of the Subject.

13. *Edri.* 1. *Stat. Weſtm.* 2. *cap.* 24, 50. *Co.* 2. *Inſt.* 407, 486. *Co.* 1. *Inſt.* 54. *b. John Webb's Caſe* 8 *Co.* 48, 49. *Co.* 3. *Inſt.* 82.

So that it is a Breach of his Truſt in the Lord Chancellor, to confer any of theſe Offices *for Gift or Brocage*, or to name and appoint unfit and inſufficient Perſons; ſince it is the Duty of his High Office to provide a Supply of proper Officers to carry on the due Execution of Juſtice in that Court.

But it is ſaid, hat it Thas not been conſtantly uſed to put all the *Maſters* into Commiſſion, and that in the Commiſſion 9. *Oct.* 4. *Ed.* VI. *four* of the *Maſters* only were in Commiſſion; and when they are in Commiſſion, that they have no Authority to act without the Preſence of the *Maſter of the Rolls*, or *one* of the *Judges*; and therefore theſe Commiſſions did not give them a judicial Authority.

Theſe Commiſſions, as well as the Office of a *Maſter*, ſubſiſting ſo antiently, ſhew, that *They* were to be taken Notice of, and comprehended within the Statutes made to prevent the Sale of *Offices of Juſtice*; and of late Times they have all been put into the Commiſſion, as appears by the late Commiſſions granted to the preſent *Maſters*, ſince the Earl had the Cuſtody of the Great Seal, and produced at the Table; and (without entring into the Diſpute between the *Maſter of the Rolls*, and the *Maſters in Chancery*, touching Juriſdiction, wherein the Earl, in his Defence, has declared, he thought the *Maſters* were in the Right) the *Judges* themſelves in theſe Commiſſions are only authoriſed to hear Cauſes, and make Decrees, with the Preſence and Concurrence of *two Maſters*; ſo that the Authority under this Commiſſion is not leſs of a judicial Nature, from the Number of Perſons neceſſary to make a Court; no more than it can be argued from the ſame Reaſon, that the *Judges* in that Commiſſion are not *judicial Officers*, becauſe they cannot make a Decree without *two Maſters*.

And altho' the Commiſſion is not properly incident to the Office of *Maſter*, as annexed thereto; yet as it has always attended upon, and accompanied the *Office*, it proves, that the *Maſters* from the firſt iſſuing theſe Commiſſions, have been always inveſted with a general judicial Power, if they had not enjoy'd ſuch Authority before.

But it is not neceſſary to rely intirely upon that Point; for if theſe *Offices* were only *Miniſterial*, yet they concern *the Adminiſtration and Execution of Juſtice* in the Court of Chancery, and, as ſuch, are under the Regulation of the like Offices at the Common Law, and are fully within the Deſcription of the Statutes of 12 *Ric.* II. and 5 and 6 *Ed.* VI. And this,

According to the Earl's Opinion, when he endeavour'd to terrify the Maſters to contribute to *Maſter Dormer's* Deficiency.

And as the Earl impeach'd, in Right of his Office of Lord Chancellor, was only intruſted with the Nomination of the *Maſters*, for the Service of the King, and for the common Benefit of all the King's Subjects; theſe Offices are no more ſaleable, or to be diſpoſed of for Money, than if they had remain'd in the immediate Gift of the Crown, by Grant under the Great Seal.

It was objected, that *Maſters in Chancery* are not expreſly mentioned in the Act of 12 *Ric.* II. and that the Statute is a Penal Law, and ought to be conſtrued ſtrictly, and ought not to be extended by Equity to theſe *Officers*.

But the conſtant Rule of Expoſition of Statutes of this Nature contradicts that Aſſertion; for,

Statutes made for the Furtherance and Advancement of Juſtice, for the Suppreſſion of Extortion and Oppreſſion, which *(ſays the Book) are horrible and odious Crimes*, ſhall have a benign and favourable Interpretation.

Beawſage's Caſe, 10 *Co.* 101, 102. *Twine's Caſe*, 3 *Co.* 82. *Gooch's Caſe*, 5 *Co.* 60. *Booth's Caſe*, 5 *Co.* 77. *Powlter's Caſe*, 11 *Co.* 34.

And upon this Occaſion permit me to repeat the Words of that Great Man, the *Lord Coke*:

Beawſage's Caſe, 10 *Co.* 101, 102. *Extortion is no other than Robbery, but is more odious; for Robbery is open, and has always the Appearance of Vice; but Extortion puts on the Viſage of Truth, and is more difficult to be try'd and diſcern'd, and is for the moſt Part accompanied with the damnable Vice of Perjury in the breaking that Oath which the Officer took when he was admitted to his Office;* Co. 3. Inſt. 149.

Which proves the Import and Effect of the general and uſual Words in an *Oath of Office*.

And here I can't help taking Notice of the Attempt of the Earl Impeach'd, by his own croſs Examination of Mr. *Eyres, the Officer of the Exchequer*, and the Queſtions propoſed by himſelf relating to the Manner of his being ſworn purſuant to the Statute of 12 *Ric.* II. *viz.* The Earl ask'd him,

What was it that you did read? Did I ſay any thing? Or what did I do? Or to that Effect;

The Officer anſwers, *I read over the Statute out of the Exchequer Book in Old French; and after I had read it, I carried the Bible to the Lord Chancellor*, &c. *who, at the Concluſion, kiſs'd the Book, but he ſaid or repeated nothing. But this has been the antient Form, which I have obſerv'd for forty Years, and I believe has been always uſed.*

In this Inſtance, your Lordſhips ſaw an Endeavour of the late *Supreme Officer of Juſtice* to explain away, or turn to Ridicule, the ſtricteſt and moſt ſolemn Tie and Obligation upon his Conſcience and Honour, impoſed by Authority of Parliament for the preventing Corruption; whereby the Earl did then (tho' ſince upon the Obſervation made by the World of ſuch his Behaviour, he has a little recollected) ſhew, that his calling God to Witneſs to his Promiſe for the Obſervation of an Act of Parliament made againſt that Vice, deſerv'd to be as little conſider'd by him, and to have as little Influence upon his Mind,

As *Oaths* taken by Traders at a certain Place, for their better Accommodation in carrying on a prohibited or fraudulent Traffick.

This is a full Explanation of his Reſerve in an equivocal Anſwer, where he ſays, *That when he took the uſual Oath of Office, he at the ſame Time took the Oaths of Allegiance and Supremacy, but no Oath of Office beſides that above ſet forth.*

Altho' he could not but underſtand the Meaning of the Introduction to the Articles, alledging, *That he did take ſuch other Oaths as have been accuſtomed;* and could not but remember his repeated Obſervations of the Ceremony, at leaſt, which he had annually practiſed under this Statute.

But the Earl's Councel have made it neceſſary to enter farther into this Tranſaction, by their inſiſting, that here was no *Formal Oath* preſcrib'd or taken, no Entry or Regiſtry kept of it; and that the reading over the Statute is meerly an Admonition or Exhortation by the Officer to the whole Aſſembly.

And the Earl has inſiſted, That it is not an *Oath of Office*, becauſe an *Oath of Office* (as he expreſs'd it) is taken once for all, but this is repeated Annually; and if it is an *Oath of Office*, yet it is not particularly charged in the Articles, nor referr'd to in any Manner, becauſe the Articles ſuppoſe it to be taken *at the Time of his coming into the Office*, which was in *May* 1718. and this Oath, at the ſooneſt, could not be taken by him till the *November* following.

To this I anſwer, That the Manner of adminiſtring this *Oath* is in the moſt ſolemn and ſignificant Form poſſible; for the repeating an *Oath* briefly to obſerve the Statute in all things, or containing a ſhort Abſtract of the Subſtance of it, would not be near ſo explicite and directory, as the reading over aloud, by a proper Officer of the Court of Exchequer, the *Act of Parliament* it ſelf, the *Chancellor* at the End *Kiſſing the Bible*; an Exhortation, which ought to make the deepeſt Impreſſion upon the Conſcience of a righteous Magiſtrate, when confirm'd by the Sanction of a Promiſſory Oath.

And to ſay, that it is no *Oath of Office*, becauſe he repeated it Annually, is to contradict the Act it ſelf, which enjoins him to take it *as Chancellor*, and in the actual Execution of his Office; and the Repetition of it Annually, upon this great Occaſion of nominating Sheriffs, demonſtrates the Opinion of our Anceſtors of the Importance and Conſequence of the Obſervation of it, for the Service of the King, and the Benefit of His Subjects; becauſe there can be no other Time more memorable, or more likely to engage Attention to it, than in ſo publick an Aſſembly proceeding to appoint the *Sheriffs* of the ſeveral Counties of the Kingdom, upon whoſe Power, Fidelity, and Juſtice in the Execution of their Offices, not only the Properties, Liberties and Lives of the Subjects of this Kingdom ſo much depend, but even the Security of His Majeſty's Perſon in any Time of Danger; and the very Being of *the Houſe of Commons*, upon the juſt and fair Returns which ought to be made by *Sheriffs*, upon the Election of *Members* to ſerve in *Parliament*.

Can this Statute then be treated and called obſolete, which is thus publickly proclaim'd every Year, to enforce the more exact Obſervation of it?

And to ſay, That the Articles are confin'd to ſuch *Oaths of Office*, as were taken by him on his firſt Appointment, is an equivocal Interpretation peculiar to the *Anſwer*; for the Articles refer generally to *all ſuch Oaths* which have been accuſtomed to be taken by the Lord Chancellor by reaſon of his *Office*. And this *Oath* ought to have been taken by him upon his firſt Appointment, if the Uſage of adminiſtring it at this Annual Seaſon had not been an Excuſe for his poſtponing it to that Time; and from that Uſage it has follow'd, that this *Oath* is not taken by any of the Officers at any other Time; but it was the Earl's Duty to obſerve this good and wholſome Law, as well before his taking this *Oath*, as afterwards.

And

And the Earl could not have forgotten this his ſolemn Engagement without Deſign; it was for his Intereſt not to mention it; and he might flatter himſelf, that the Managers would not have taken notice of it.

And as to the Difference in the Form of adminiſtring *this Oath* from the common Method, it is not material; for the uſual Form is not eſſential to the Oath itſelf, it being ſufficient that there is a calling *Almighty God* to be a Witneſs of the Truth of the Earl's Promiſe, by his touching the *Holy Scripture*.

Co. 3 *Inſt.* 164, 165.

But whether the Oath be conſtantly or uſually taken in Practice, or not, it will not alter the Law; and the Crime of ſelling theſe Offices for *Gift* and *Brokage* ſtill remains, notwithſtanding the Neglect of this additional Obligation to refrain from the Commiſſion of it.

The Objections made by the Earl and his Council upon this Head, have occaſioned this Digreſſion.

The next Part of the Earl's Defence is a direct Juſtification of the Fact of which he is accuſed; and, not contented to leave it to his *Council* (for whoſe Excuſe it might have been ſaid, that they were willing to try every thing) the *Earl* himſelf has inſiſted upon it, that his taking theſe Sums of Money *is lawful*; becauſe, as *Lord Chancellor*, he had a *Right of Recommendation* of Mr. *Hamerſly*, as an Officer appointed by Patent under the Great Seal, and alſo the *Right of Nomination and Admiſſion* of the *Maſters*, ſolely in himſelf; and a Man may diſpoſe of and diſpenſe his own Favour upon what Terms he pleaſes; and Officers may give Money for their Places, and yet be good Officers, as it is ſuggeſted.

But ſome Inſtances of a very extraordinary Nature were cited out of the *Hiſtory of the Exchequer*, to prove that *Chancellors*, Judges, and other Officers of Truſt, had purchaſed their Places of King *Stephen* and King *John*; viz. *That* Richard Fitz Alured *gave King* Stephen *fifteen Marks to bear Pleas*; *and* Walter de Gray *gave King* John *five thouſand Pounds to have the King's Chancery for Life*; and other Officers there named.

Madox's *Hiſt. of the Excheq.* 43. 743. *He ſays it may ſeem ſtrange, and excuſes it.*

Mr. *Madox*, the Collector and Publiſher of this *Hiſtory of the Exchequer*, 43, 44, mentioning theſe Inſtances, ſays, *That in the Time of King* Stephen, Geoffrey *the Chancellor fined in three thouſand and ſix Pounds and a Mark for the King's Seal. This I underſtand to be a Fine then lately made with the King for the Office of Chancellor, or to have the keeping of the King's Seal.* But at the ſame time Mr. *Madox* the Publiſher makes this honeſt Reflection upon his Precedents:

Which Precedent, ſays he, *may juſtly ſeem ſtrange to us at this Day; but it ſeemeth that in thoſe times things of the like kind with this were ſometimes done.* Which Obſervation the Council, or the *Earl* himſelf, were not pleaſed to repeat.

And ſome Inſtances were cited out of the *Roman* Law, where Part of the Revenue of the Emperors did ariſe out of Perquiſites of this Kind; from whence it was infer'd, that the taking theſe Sums for Sale of Offices, was not againſt Natural Juſtice.

But theſe are of no Authority in this Kingdom, when they are repugnant to the Law of the Land, and have never been receiv'd; and the *Common Law* of *England* muſt be the Rule of Juſtice in this Caſe.

And Mr. *Dupper*, the Earl's late *Under Secretary* of the *Bankrupts*, was produced, to prove by his Opinion and Obſervation, that no Office whatſoever paſſing by Grant under the Great Seal ought to be ſurrender'd or granted without an Acknowledgment (as he call'd it) to the Chancellor or Keeper; and that he had formerly communicated theſe his Thoughts to the *Earl* and his Secretary Mr. *Cottingham*.

And your Lordſhips, upon Recollection of the Evidence, will find the Uſe and Improvement they were pleaſed to make of this Advice, in the Caſe of Mr. *Thomas Bennet*'s Surrender.

But in Anſwer thereto, it appeared upon the Evidence in regard to Mr. *Hamerſly*'s Office of *Clerk of the Cuſtodies*, that there being no Salary annexed to the Place, it did belong to the *Secretary of State* to recommend or to obtain the Sign Manual; ſo that the Earl's Deſire of Gain in this Inſtance carry'd him beyond the Limits of his own Office, where he had no Right of Recommendation, to raiſe the poor low Sum of *One hundred and five Pounds*, at the Time when he was *One of the Regents*; and thus he join'd his Share of the *Royal Authority* to his Power of *Lord Chancellor*, in order to get and ſecure to his own private Uſe ſo conſiderable a Sum as *One hundred and five Pounds* from an exhauſted Maſter! a ſtrong Evidence of his corrupt Intent and Views.

This ſingle Exaction overturns the whole Fabrick of Merit, ſuppoſed to be raiſed by the few ſcatter'd Inſtances of Charity, which he has been pleaſed to divulge in Evidence.

But if the Authorities cited for the Earl to this Purpoſe prove any thing, they prove too much; that the Offices of the *Judges* in the *Supream Courts of Juſtice* were lawfully to be bought and ſold at the Common Law, before the Act 5 *Ed.* 6. which is an Opinion that the *Earl* himſelf, in his *Anſwer*, did not think convenient to diſcloſe or inſiſt upon; and it is going a long way back for an Example to prove the Lawfulneſs of an Action, which he could not find without the Aſſiſtance of an Antiquary.

He might have brought more recent Inſtances from Countries, where unlimited Power does prevail, and where Juſtice itſelf, and the Places in which it is to be diſpenſed, are not to be attained without a Bribe.

But it ſeems as if the Lord impeached had an early Inclination to look out for a Precedent, to give him a Countenance in ſuch like Practices; yet he found none publiſh'd to the World, except in the Reigns of *two Princes*, whoſe arbitrary Behaviour produced that memorable Law, *the Great Charter of our Liberties*, firſt paſs'd in the Form of a Charter *ann*' 17 *Johan*', and confirm'd *ann*' 9 *Hen*' 3. wherein it was at that time found neceſſary to declare by a Law, *Nulli vendemus Juſtitiam aut Rectum.* Magna Charta, *cap.* 29. Co. 2. *Inſt.* 55.

From which Declaration of the Crown it neceſſarily follows, that the Adminiſtration and Execution of Diſtributive Juſtice to a free People, are not to be eſteem'd the Property or Eſtate of a Great Officer, to be raiſed or encreaſed by his Sale of the ſubordinate Offices of Juſtice; but are the great Prerogatives of an *Engliſh* Prince, to be exerciſed freely for the Safety and Eaſe of the Subject, without introducing Expence and Charge upon the People in their Application for Juſtice and Right.

And when a Doctrine of this dangerous and deſtructive Nature to the Rights and Liberties of

the whole Nation, as it expoſes their only Security to Sale for Money, is thus avowedly and openly juſtified and inſiſted upon at your Lordſhips Bar, by a *Peer* of your Houſe, who has born the high Office of *Lord Chancellor of Great Britain* in the firſt Reign under the Act of Settlement of the Crown: Your Lordſhips will take the beſt Meaſures to render the Subjects ſecure in their Expectation of Juſtice, by a ſuitable and publick Mark of your Deteſtation of ſo licentious an Opinion; and thereby convince the Nation, that even the meer Suggeſtion of ſuch a corrupt Principle is an undeſerv'd Reproach, and highly injurious to his Majeſty's Adminiſtration.

Yet if it ſhould be ſuppoſed by way of Argument (which has not been proved, and therefore cannot be admitted) that the Sale of theſe Offices has been of late tolerated, for the greater Increaſe of the Perquiſites of the firſt Officer of the Crown in the principal Court of Juſtice; yet the Earl's raiſing and receiving theſe exorbitant Sums above double to any Inſtance before his own Time, which he has made appear, upon a Pretence that the Buſineſs of the Court of Chancery was very much advanc'd during his Reſidence there, will be as criminal, as if he had put the Offices to Auction, when no Sum or Fee had ever been taken or heard of.

And in his Method of Practice there can be no Diſtinction between a Preſent and a Price; for he made the *moſt* always of his Share or Claim in the Office. When he was only to admit upon a Surrender, he took *fifteen Hundred Guineas* for his Good Will and Approbation meerly; and when he admitted upon a Death, he took *five thouſand Guineas* at the leaſt, altho' the Office was greatly in Debt; as in *Borret*'s Caſe, where the Suitors will loſe upwards of *twelve thouſand Pounds* of their Effects, by the loweſt Computation.

As for the ſmall antient Fees which have been paid to the Great Seal for Time immemorial, upon the ſealing every Patent, theſe are out of the preſent Queſtion; and where Uſage beyond Time of Memory has allow'd the Receipt of theſe little Sums, it will be preſum'd (if there was Occaſion for it) that ſome Act of Parliament had paſs'd to make it lawful.

And when it is ſaid, that a good Officer may give Money for his Place, and may reſiſt the Temptation of Extortion; it is what the Law of *England* would not truſt to human Frailty; and if all the Actions and Behaviour of the beſt of the *Maſters*, with reſpect to their Fees, their Manner of Proceeding upon References, and their diſpoſing and trafficking with the Money of the Suitors, were to be enquired into more particularly, there can be no doubt, from what has appeared in Evidence upon this Tryal, but that the Temptation and Inclination to Profit, towards reimburſing themſelves the Money advanced to the *Earl*, and the preceding *Maſter*, have overcome their moſt ſteady Reſolutions to Virtue and Self-denial.

As to the citing particular Caſes, wherein the Sale of Offices Judicial, or of the like ſort with thoſe in Queſtion, have been determin'd to be illegal at Common Law, I apprehend it is not neceſſary; for that the Reaſon of the Common Law, and the Purport of the ſeveral Statutes mention'd, do fully and ſufficiently maintain the Validity of the Articles in that reſpect.

And the Managers might more properly call upon the Earl and his Council for Authorities or Judgments to the contrary.

But Matters of a corrupt Nature are always privately tranſacted, and no Witneſſes, or at moſt very rarely, are to be produced beſides the Parties concern'd.

And if the Earl will produce any Inſtance in the Books, where ſuch a Tranſaction has been mention'd, I may engage to ſhew him at the ſame time, that it has been holden illegal.

The Authority already cited by a Learned Manager is expreſs:

Stockwith *cont'* North, *Moore* 781. North *was fined in the* Star-Chamber, *for that he being Sheriff of the County of* Nottingham *did take Money for the Goalerſhip and the Bailiwick for his Year; and at firſt he gave them to his Servants, who ſold them, but himſelf received the Money; and this was adjudged to be a letting to Farm of his County, contrary to the Statute of* 4 Hen. 4. cap. 5. *Yet there note,* ſays the Reporter, *that the Statute itſelf gives a Penalty certain and pecuniary, and it is* malum prohibitum, non in ſe. *But the Court held, that in as much as great Corruption enſues from the Greedineſs of the Officers, and they are inforced thereto by the Prices which they give for Things which ought not to be ſold, that this ſetting of Offices to Farm and Sale, is* malum in ſe, *and finable.* Noy 102.

But the Earl objected, that this Opinion is extrajudicial; and the Court were miſtaken in one part, when they ſay, *that the Statute* 4 Hen' 4. *did inflict a Penalty*; whereas it did not, but only *prohibited the letting to Farm the Bailiwick*, which was lawful before, and therefore properly finable, as a Breach of the Act.

In Anſwer to which, it is plain upon Peruſal of the Book, that that Part relating to the Act 4 *H.* 4. impoſing a Penalty, is only the Note of the Council, or Reporter, who took that particular Offence to be only *malum prohibitum*; and whether the Court did impoſe that Fine by Force of the Statute, or as warranted by the Common Law, it will not weaken the Authority; becauſe the Court expreſly declare it to be their Opinion, *that the ſelling of the Office of Goaler was* malum in ſe, *and finable*; which ſhew'd the Judgment of the Court on that part of the Queſtion; ſo that there is no Miſtake to be imputed to the Court.

And my Lord *Coke*, in his 3 *Inſt. fol.* 146. *cap.* 68. *of Bribery and Extortion*, and *fol.* 224 & 225. *cap.* 101. *of Judgments and Execution*, deſcribes theſe Crimes as *Offences at the Common Law*, and puts his Examples accordingly, which may be there conſulted.

So in the Caſe of *Smith* and *Mall*, 2 *Rolls*, Rep. 263. and *Linley*'s Caſe, *Hutton.* 70. where it is holden, *That if any Judge or Officer takes more than the uſual Fees, he is puniſhable by Indictment at the Common Law.* Which neceſſarily implies, that they are puniſhable at the Common Law, for taking Money where no Fee at all is due.

The ſtrict Definition of Extortion is, *When any Perſon Colore Officij extorquet Feodum non debitum, pluſquam debitum, aut antequam debitum. Hutton.* 52, 53. *Co.* 3. Inſt. 149, 150. *Beawfage*'s Caſe, 10 *Co.* 101, 102. *Dive* and *Maningham*, *Plowden*, 68. a. *Co.* 1. Inſt. 368. b. Sir *John Bingley*'s Caſe, *Poph.* 149. *Rex* & *Gower*, 1 *Sid.* 91.

But largely, *Extortion is taken for any Oppreſſion by extort Power, or by Colour or Pretence of Right. Co.* 1. Inſt. 368. b.

But it is urged by the Earl and his Council, that it appears from the Statute 5 & 6 *E.* 6. that the

the buying or ſelling of theſe Offices was lawful at the Common Law, and is not prohibited by the Statute 12 *Rich.* II. and that the Statute of *E.* VI. neither declares nor creates any Crime, but only impoſes a ſpecial and particular Penalty, by Loſs of the Office or Diſability, and therefore the Earl having been diſmiſs'd the Great Seal, there can be no Puniſhment inflicted upon him.

It is agreed by them, that the Statute 5 and 6 *E.* VI. includes both theſe Offices, of *Clerk of the Cuſtodies*, as an Office of Clerkſhip in a Court of Record; and of the *Maſters in Chancery*, as Offices touching the Adminiſtration and Execution of Juſtice, in point of Deſcription.

And upon reading the Act it is evident, that this Statute in the *Preamble*, and throughout the whole Act, treats this way of dealing, as *a Corruption*, and illegal in its Nature, and expreſly calls it ſo.

The Preamble ſays, *For the avoiding of Corruption, which may happen hereafter to be in the Officers and Miniſters in thoſe Courts and Places, wherein there is Requiſite to be had the true Adminiſtration of Juſtice or Services of Truſt.*

And this Statute carries the Puniſhment farther, but does not take away the Puniſhment of it as a Miſdemeanor at the Common Law, by Fine or Impriſonment upon Indictment.

And there is not any *Proviſo* in the Act which mentions or exempts the *Court of Chancery*, or any of the Officers of that Court; but in conſequence, when it mentions other Courts in a *Proviſo*, muſt more ſtrongly be intended to include them in the Act.

The *firſt Proviſo* extends to Offices of a private Nature, and to Offices of Inheritance, and can't relate to any *judicial Office*, nor to either of theſe Officers, who hold only for Life; altho' where the Nature of the Office has allow'd it to become inheritable, it makes it alienable; but no ſuch Inſtance is to be met with in the Caſe of *judicial Offices*.

The *ſecond Proviſo* is to prevent any Perſon's being ſurpriz'd into the Penalty unwittingly, before Notice of the Act, or by a Retroſpect. And altho' the Statute takes Notice that divers Perſons did make ſuch corrupt Bargains, it is only by Way and with an Intent of preventing, and not of legitimating them; and it leaves them all as they ſtood at Common Law, until that Day appointed by the Act was paſt.

And the *laſt Proviſo* does nothing more, and leaves the Juſtices to act upon their own Knowledge and Diſcretion in the Law, according to the Nature of the Office, without caſting any Imputation upon them unneceſſarily.

But ſo exceeding cautious was the Legiſlature, that there is not any Expreſſion in any Part of the Act to declare or enact ſuch Bargains in the Caſes excepted to be good.

But the Statute leaves them entirely to the Regulation and Direction of the Common Law and former Acts of Parliament.

So that altho' the *Earl* of *Macclesfield*, by his being diſmiſs'd from the Office of *Lord Chancellor*, is not liable to ſuffer the additional Puniſhment contain'd in this Act of Loſs of his Office: Yet he will ſtill be liable to the Puniſhment at Common Law, and upon the ſeveral other Statutes, and accordingly remains open and ſubject to your Lordſhip's juſt Sentence.

For where a Statute does give or impoſe a new Penalty, for a Matter which was an Offence at the Common Law, the Proſecutor may purſue either of the Remedies; altho' where a Statute makes or creates the Offence, that Remedy muſt be taken which the Statute gives.

Regin' cont. Wigg' Pas' 4. *Anne Banco, Regin' Salk.* 460. *Com' Leiceſt. & Mandy* 2. *Sid.* 32. Dr. *Huſſey's* Caſe, 9. *Co.* 74. *Cranbank's* Caſe, 2. *Rolls Rep.* 49. *Burgen's* Caſe, 1. *Ven.* 13. 1. *Sid.* 409.

Thus I have gone into this long Debate, to ſhew that the *Commons* have founded their *Articles* upon the general Rules of the Common Law, ſupported and inforced by divers Acts of Parliament.

As to the Proofs.

I ſhall now take notice of the *Evidence* upon the particular *Articles* aſſign'd to me, and ſhall obſerve not only upon the Proofs given by the *Commons* in Maintenance of thoſe *Articles*, but likewiſe upon the Examination made on behalf of the *Earl* impeach'd, and in his Defence.

As to the *Money Articles*, I ſhall make this general Obſervation upon the Evidence, that it has been agreed by all the Witneſſes examin'd thereto, as well by Mr. *Cottingham*, the Earl's *Secretary*, and on theſe Contracts his Lordſhip's Broker, as by the *Maſters* themſelves, and their Agents, that the whole Tranſaction was done and finiſh'd, and the Money actually paid and deliver'd into the *Lord Chancellor's* own Hands (except Mr. *Thurſton's Five Thouſand Guineas*, which were deliver'd to another for his Lordſhip's Service) before the Reſignation of the former Officer was accepted, and before the Admiſſion and Swearing of the Succeſſor.

So that the principal Point and main Streſs of the *Articles* are thus in fact agreed upon by both Parties.

But as to theſe *Articles*, and more particularly with reſpect to the *One Hundred and Five Pounds* receiv'd from Mr. *Thomas Bennet*, and the *Fifteen Hundred Guineas* each receiv'd from Mr. *Kinaſton* and Mr. *Bennet*, the *Earl* and his Council have ſuggeſted a Deficiency in the Proof, ariſing from a Contrariety in the Evidence given by Mr. *Cottingham* the Earl's *Secretary*, to what has been ſworn by Mr. *Bennet*, Mr. *Kinaſton*, and Mr. *Charles Baily*; and, upon the Credit of the *Secretary's* Teſtimony, would ſuppoſe that each of theſe Sums proceeded firſt from the free and voluntary Offer of the *Maſters*, and was not inſiſted upon by the *Earl* or his *Secretary* before hand, as charged in the *Articles*, and prov'd by the *Maſters*, but only accepted and receiv'd by *Cottingham* and the *Lord Chancellor*.

But the Nature of the Tranſaction, and the Circumſtances of the Perſons, do very ſtrongly ſupport the Credit of the *Witneſſes* produced by the *Commons*, and the Probability of their Teſtimony, who have prov'd every Part of thoſe *Articles*, in the very Words of them; and Mr. *Cottingham* himſelf has confeſs'd enough to maintain the *Articles* in Subſtance, altho' he ſhould be credited in any Circumſtance wherein he varies from the other *Witneſſes*.

As to the *ninth Article*, it will be very difficult to believe that Mr. *Bennet*, who had lately paid the *Lord Chancellor* ſo large a Sum for his Admiſſion to the Office of a *Maſter*, which he had borrowed of his *Brother*, and who had paid no Admittance Money for this Place of *Clerk of the Cuſtodies* to the *former Chancellor*, the Earl *Cowper*; and who had likewiſe been informed by his Brother Mr. *John Bennet*, that nothing was paid by him to *Earl Cowper* upon his being admitted to the ſame Office, and that *Lord Cowper* himſelf had

declared to Mr. *John Bennet* that there was nothing due upon his Admiſſion; that Mr. *Thomas Bennet* under theſe Circumſtances ſhould of his own Accord firſt propoſe a *Preſent* (as it is called) when he could not well imagine that there was any Pretence to it; that is hardly credible.

And *Cottingham* himſelf has own'd, that he told Mr. *Thomas Bennet* that ſomething was expected, and that he carried the *Propoſal* of *One hundred and five Pounds* to the *Earl*, who accepted it, and thereupon he receiv'd the Money from Mr. *Bennet*, and paid it over to the *Earl*; after which the *Earl* then took the whole Care upon himſelf of expediting the *Sign Manual* and the *Patent*.

Now, *Cottingham* being the Factor employ'd by the *Earl* in all theſe Bargains, who has been avow'd by the *Earl* to be his Agent, and has been produc'd as his *Witneſs*, and ſupported by him; every thing that *Cottingham* declares and acts in compleating theſe Contracts, will be conſider'd as the Act of the *Earl* himſelf, and his own bartering; eſpecially, when *Cottingham* (as he depoſed before your Lordſhips) did not conclude the Bargain, until he had receiv'd the *Earl*'s Approbation thereof; and when the *Earl* at the End confirms the whole by his Receipt of the Money.

And a *Lord Chancellor*'s expecting ſomething, or a Sum of Money, be it more or leſs, and this his Expectation declared and notified by his *Secretary* to the Perſon applying to be admitted into the Office, is a peremptory Demand, and an inſiſting, when the *Lord Chancellor* alone, and no other, has the Power of taking the Reſignation, or making it effectual by paſſing the new Patent, and of admitting the new Officer.

But this Matter has been explain'd and confirmed by the Evidence of *Dupper* the *Under Secretary*, the *Earl*'s own *Witneſs*, upon whoſe Authority the *Earl* relied, who acquainted your Lordſhips, that upon *Cottingham*'s telling him of the intended Surrender of Mr. *Thomas Bennet*, *Dupper* ſaid, there ought to be an Acknowledgment to the *Great Seal*, and he had heard that Money had been given, which *Cottingham* himſelf at firſt doubted of; but *Dupper* ſoon ſatisfied both the *Earl* and his *Secretary* that Money might be ask'd.

This confirms the Evidence of Mr. *Thomas Bennet*, that nothing was ſaid about Money to be given, or an Expectation of ſomething at his firſt meeting with *Cottingham*, but it was introduced by *Cottingham* at their ſecond Meeting; which muſt be after this Advice and Information of *Dupper*, and that then the Reſolution was taken of expecting a Sum of Money.

This argues the Diffidence of the *Earl* impeached in ſetting up this Pretence, and his Suſpicion of the Illegality of it; yet the Opinion of the Perſon adviſing, and the *Earl*'s own Inclination to Gain, were too powerful to be reſiſted.

But to remove the Foundation of this *Objection*:

The Point or *Charge* of theſe *Articles* lies in the taking theſe Sums by the Earl, *colore officii ſui*, as *Lord Chancellor*, and without Right, which is *Extortion* and *Corruption*.

And if he did receive theſe Payments by Colour of his Authority, and without Right, (and he has made out no Pretence of Right) he will be guilty of the Crimes charg'd upon him, in how artificial a manner ſoever he tranſacted theſe Matters.

It will amount to the ſame, whether they propoſed the Sum to him, or he made the Demand upon them; yet if ſomething was expected by him, and he declin'd doing the Duty of his *Office*, until that ſomething was offered and paid to him, it is an *Exaction* and an *Impoſition*, which is *criminal*, and maintains the *Articles*.

Co. 3. *Inſt.* 148. 149. E. *Middx*'s Caſe.

And it is remarkable, that the *Earl* would never give Credit for his *Preſent*, but always had it ſafe in his own Hand, before he admitted the *Officer*.

It has been attempted, on behalf of the *Earl* of *Macclesfield*, to prove that former *Chancellors* have uſed to claim and receive Money upon the taking Surrenders, and making new Grants of this *Office*; but herein the *Earl* has fail'd, and has not been able to give legal Proof of any one Inſtance of that kind, upon the change of this Office of *Clerk of the Cuſtodies*.

For *Dupper* did not ſee any Money paid on that Occaſion, nor knows any thing of it of his own Knowledge, but only copied an *Account* which he came by very odly, wherein (as he ſays) there was an *Item* to that effect; and his Evidence depended meerly upon Hear-ſay, and ought to have no Regard.

The Evidence of Mr. *Oker* turns againſt the *Earl*; for altho' there were Surrenders in both the Times, when *Earl Cowper* held the *Great Seal*, yet nothing was paid or taken by him; and upon the Surrender of *Thompſon* to *Edwards* in the late *Queen*'s Time, it was ſaid that nothing was given; and upon the Surrender of Mr. *John Bennet* to Mr. *Thomas Bennet*, whilſt *Earl Cowper* enjoyed the Seal under his *Majeſty*, nothing was paid or claimed.

And the ſuppoſed Intimation or Opinion of *Lord Cowper*, which *Oker* mentions, was between theſe two Surrenders, which makes it very unlikely that *Earl Cowper* ſhould make ſuch a Declaration; yet if ſuch Diſcourſe there was, it is plain, that upon better Conſideration, the *Lord Cowper* departed from ſuch Pretenſion, and diſcover'd no Expectation of any thing, upon the laſt Surrender and Grant of this *Office*.

And as nothing was taken by *Lord Cowper*, upon the Surrender of Mr. *John Bennet* to Mr. *Thomas Bennet*, it will be prov'd, that on the Surrender of Mr. *Edwards* to Mr. *John Bennet*, *Lord Cowper* refuſed to hear of a Preſent, when it was hinted at, and declared that nothing was due to the *Great Seal*.

But this *Defence*, which is founded upon a ſuppoſed Uſage to receive a *Fee* for permitting ſuch Surrenders, and from thence would infer a Right, or an Excuſe to the *Earl* impeach'd, in doing the like, is a Proof and Confirmation of the *Article*, as charg'd by the *Commons*; That the *Earl* did inſiſt upon the Money, as his *Right* and *Due*.

ART. V. As to the Bargain with Mr. *Kinaſton*, it appears from his Teſtimony, and the Evidence of Mr. *Charles Baily*, who paid the Money, that Mr. *Kinaſton* endeavour'd to obtain the Admiſſion at a lower Rate. At firſt he offer'd but *one thouſand Guineas*; and at the End Mr. *Baily* underſtood it to have been agreed for at *fifteen hundred Pounds*; and when Mr. *Cottingham* ſaid *fifteen hundred Guineas* were expected, *Baily* did not proceed till he had informed Mr. *Kinaſton* therewith, who anſwer'd, that ſince Mr. *Cottingham* had mentioned that Sum, he muſt ſubmit, and do accordingly.

And this Diſpute, upon the Difference between *Pounds* and *Guineas* only, explains the manner of theſe Dealings; That they were formal Contracts and Bargains between the *Secretary* and the *Maſters*, at the beſt Price that could be got; and tho' there was no hagling with the *Earl* himſelf

(as

(as *Cottingham* expreſs'd it at one of theſe Dealings) yet he had a faithful *Steward*, who could and did haggle very well for him; and when the *Secretary* had done his utmoſt, the *Earl* accepted the Price which had been agreed upon.

ART. VI. As to the *fifteen hundred Guineas*, paid by Mr. *Thomas Bennet* for his Admiſſion, and the manner of making that Bargain, Mr. *Bennet*'s Evidence of his firſt offering *one thouſand Guineas*, and *Cottingham*'s Refuſal of it, ſaying, He hoped Mr. *Bennet* would not lower the Price, and the Hazard of his being refus'd, and that there was no haggling with my Lord, and at laſt agreeing for *fifteen hundred Guineas*, is ſupported from the uſual Behaviour of *Cottingham*, as well as from the Probability of the thing it ſelf; that a Man may reaſonably be preſumed to endeavour to ſave what he can, and when he is purchaſing, to get it at the cheapeſt; altho' (as it has appear'd upon the Examination) Mr. *Bennet* had little Reaſon to expect that a ſucceeding *Chancellor* would be ſatisfied with his Circumſtances, and admit him.

Upon the *Earl*'s Defence againſt the Charge contained in theſe two *Articles*, it was prov'd by Mr. *Goldesbrough* the *Regiſter*, that the *Earl* about the 23d of *February* laſt had paid thoſe *two Sums* into the *Court* of *Chancery*, to be apply'd for the Benefit of the *Suitors*; and this is offer'd either in his Diſcharge, or as a Merit. But this was done ſeveral Days after the *Impeachment*, and after *publick* Complaint had been made againſt the *Earl* upon theſe *two Inſtances*, and is a very proper example of the *Earl*'s own Conſtruction of a *voluntary Preſent*; for after the *Houſe of Commons* had taken this Affair into their Conſideration, and had demanded Juſtice and Satisfaction from the *Earl* by a *Parliamentary Proſecution*, the *Earl* then did *freely and voluntarily*, and *of his own Accord*, make a *Preſent* to the *Suitors* of the *Court* of theſe *two Sums*, which he had, in the like free and voluntary Manner, receiv'd as a *Preſent* from Mr. *Kinaſton* and Mr. *Bennet*.

But this Action contradicts his whole *Defence*; and ſhews that he was convinc'd that he had no Right to receive or detain the *Money*, and was afraid to keep it any longer.

ART. VII. and VIII. As to the *two five thouſand Guineas* receiv'd by the *Earl* of Mr. *Elde* and Mr. *Thurſton*, it is prov'd that the Price was ſettled between *them* and Mr. *Cottingham*; and when Mr. *Elde* (of whom the Earl expreſs'd ſo good an Opinion) offered *five thouſand Pounds*, *Cottingham* ſaid *Guineas were handſomer*; and the particular Method of Payment ſhews the inward Rebukes of his Conſcience, and his Fear of a Diſcovery.

And theſe *two Facts* ſhew the Prevalency of his Avarice, above any other Paſſion. For in Mr. *Elde*'s Caſe, he broke thro' the Obligation of Gratitude and Friendſhip to him, to receive his Money in a cover'd Manner, in *a Basket*. And in Mr. *Thurſton*'s, he tried to beguile his Fear of a Diſcovery, by ſuffering the Money to come to him thro' a private and unſuſpected Hand.

And theſe *two Inſtances* were of ſo nice a Nature, that his faithful *Secretary* own'd, that he was not admitted into the Secret. For it appears that the *Earl* either knew or ſuſpected there would be a *Loſs* in *Borret*'s *Office* by his Inſolvency, tho' it was not reduc'd to any Certainty; and it now appears, at the leaſt, to amount unto *twelve thouſand Pounds*.

But the *Earl* left the *Suitors* of the *Court* to bear that Loſs, and never took Care to procure a *juſt Satisfaction* to *them*. Which the *Commons* urge both as an Evidence and an Aggravation of his Guilt; ſince he therein preferr'd his own private Gain, to that Security, which his *high Truſt* required him to have provided for the *Creditors* of the *Court*.

And the returning great Part of theſe *two Sums* after the Confuſion and Diſorders of the *Court* became publick, and Part of Mr. *Elde*'s Money, after the *Maſters* had been call'd upon to bring in their *Caſh*, and which upon Mr. *Elde*'s Evidence may be reaſonably preſum'd to have been made uſe of by him to make a falſe Shew before the *Commiſſioners*, are rather Decrees againſt himſelf, than any Extenuation of his Guilt.

And as to the *Earl*'s great Merit, which he ſo largely dwelt upon, and ſo often repeated, that he might have had *ſix thouſand Pounds* from Mr. *Lucas*, which he relinquiſh'd to accept of *five thouſand Guineas* from Mr. *Elde*. The *Managers* will call Mr. *Lucas*, who (in anſwer to Mr. *Eld*'s Teſtimony) will prove, that when he offer'd the *ſix thouſand Pounds*, it was upon this *expreſs Condition*, that if the *Money* of the *Suitors*, or the *Caſh*, was taken out of the *Maſters* Hands on a *Parliamentary Inquiry*, he ſhould have a Return of ſome Part; and that the *Earl* ſhould indemnify him againſt all Deficiencies.

So that the *Earl* did not refuſe Mr. *Lucas*'s *ſix thouſand Pounds*, from a Diſ-inclination to the Sum, if he could have kept the whole ſecurely; but becauſe *five thouſand Guineas* paid abſolutely, was better than *ſix thouſand Pounds* ſubject to a Condition of refunding, and incumber'd with an Engagement of Indemnification.

But the *Earl*'s chief *Defence* is rais'd from the Practice of his *Predeceſſors*, who (as he pretends) led him into theſe Miſtakes; and he has prov'd *ſeven hundred Pounds* to have been paid by Mr. *Lovibond*, about *twelve Years* ſince, and *eight hundred Pounds* by Mr. *Holford*, and *five hundred Pounds* by Mr. *John Bennet* in the *Year* 1716. upon their reſpective Admiſſions into the *Offices* of *Maſters*; and from thence inſiſts, that altho' he can't claim the exact Sum of *fifteen hundred Pounds* receiv'd by himſelf upon Admiſſions, as a certain and eſtabliſh'd *Fee* or Perquiſite, becauſe he has taken *twice* as much as his *Predeceſſor* did: Yet this *Practice* gives him a Right to a *Preſent*, and it was in his *own Diſcretion* to declare the *Sum*, as he ſhould think reaſonable, according to the late Increaſe of the Buſineſs of the *Court*.

But, *a Preſent* altogether uncertain in the *Quantum*, and depending in this Manner upon the Pleaſure of the Perſon who is to receive it, ſeems to differ very little, if at all, from a *Price*.

The *Earl* inſiſts likewiſe, that the Denial or Refuſal of ſome other of the *Witneſſes* to anſwer his *Queſtions*, is a farther Proof that they paid Money.

This ſhews that the *Earl* thinks he wants the Proof very much, when he makes uſe of ſuch an Argument to raiſe Evidence.

The *Witneſs* refuſes to anſwer ſuch *Queſtions*, which he is not oblig'd by the Rules of *Law* to reſolve, concerning the Manner of his Admiſſion, and the *Commons* cannot call *Witneſſes* to contradict or explain that which has never been deliver'd in *Evidence*.

Yet the *Earl* deſires your Lordſhips to believe this as *Evidence*, tho' you never did hear it, and to act and vote, upon *your Honour*, as if you had heard and admitted it.

But howſoever the *Earl* may have directed himſelf, he can never think that ſuch an unjuſt Inſinuation will ever prevail upon *your Judgment*; or that he can thereby move *your Lordſhips* to give up *your Honour*, in the higheſt Exerciſe of your *judicial Power*.

And theſe *two* or *three* late Inſtances, which he has produced, cannot change the *Common Law*, or repeal the ſeveral *Acts of Parliament*, whereby they

are declar'd illegal ; and if he makes uſe of them as *Precedents*, he ought to take them with all their Circumſtances, which upon the whole Matter rather turn againſt him. For Mr. *Holford* and Mr. *Lovibond* were at that time, and ſtill continue Men of Subſtance ; and Mr. *John Bennet* was of Ability at the Time of his Admiſſion, altho' in the Year 1720. he ſuſtain'd ſeveral Loſſes, which impair'd his Eſtate. And *they* all paid the *Sums* of *Money* mention'd out of their *own Eſtates*, and no Part of it out of the *Suitor*'s *Caſh* or *Effects*. And the whole of the *Suitor*'s *Effects* was deliver'd over to *them* by an *Account* with which *they* ſtood charg'd.

So that altho' theſe few Inſtances were not animadverted upon, either becauſe they were not publickly known, or that no Inconvenience did enſue therefrom : Yet they will afford no Excuſe to the *Earl* impeach'd for taking *double* and *treble* the Value of thoſe *Sums* upon his Admiſſion of *Maſters*, who were Perſons of *ſmall* or *incumber'd Eſtates*, and who were neceſſitated to employ the *Caſh* and *Effects* of the *Suitors* in the Payment for their *Offices*, and for their *Admiſſions* ; and thro' whoſe Inſolvency ſo great a *Loſs* and Damage has come upon the *Suitors*.

But an *Officer* of *publick Truſt* and *Service* ought to look well to his *Precedents* before he follows them ; and if he will purſue an illegal or unjuſtifiable *Precedent*, he does it at his Peril, and muſt anſwer for the Conſequences ; eſpecially in the Situation of the *higheſt Officer* in the *Kingdom*, who was intruſted with the Adminiſtration of *publick Juſtice*, in the *ſupreme Court of Law and Equity* ; and whoſe *Duty* it was as well to declare and expound the Law to others, and to regulate and reform the Exactions and Abuſes, which at any Time may have crept into the *inferior Courts* of *Juſtice*, to the Injury and Oppreſſion of the *Suitors* of other *Courts*, as to prevent or ſuppreſs Corruption and Extortion in the *Court*, where he more immediately preſided.

ART. XI. As to this *Article*, the particular Circumſtances of Mr. *Kinaſton* and Mr. *Thomas Bennet* have been prov'd, and the Deficiencies in their *Offices*, and how unequal they were to the *Truſt* of the *great Sums* and *Effects* depoſited in their Hands.

By the *Orders* of the *Court*, which have been read, it appears that Mr. *Kinaſton*'s Deficiency amounts to 26,908 *l.* 11 *s.* 3 *d.* 1 *q.* and Mr. *Bennet*'s to 16,075 *l.* Mr. *Kinaſton* had about 50,000 *l.* in Money and Effects of the *Suitors* in his Cuſtody, and Mr. *Thomas Bennet* near 100,000.

This is likewiſe a high *Breach of Truſt* in the *Earl*, and is an Offence againſt the Statute of 12 *Rich.* II. *cap.* 2.

12 *Rich.* II. *cap.* 2.—*But that they make all ſuch Officers and Miniſters of the beſt and moſt lawful Men.*

Which Words in the Law import Sufficiency of Subſtance, as well as Capacity.

And the Statute 2 *Hen.* VI. *cap.* 10. takes it for granted, that the ſuperior Officers were before that Time under the Obligation of the Common Law, or ſome former Statute to that Effect ; when by the ſaid Act, 2 *Hen.* VI. *cap.* 10. *Co.* 4. *Inſt.* 114. intituled, *What manner of inferior Officers ſhall be appointed in the King's Courts*, it is enacted, *To the Intent that better and more ſure Government be had within the Courts of our Lord the King, for his Profit, and Eaſe of his People, which have to purſue and to do in the ſame* ; it is ordained and eſtabliſhed, *That all the Officers made by the King's Letters Patents Royal within the ſaid Courts, which have Power and Authority by virtue of their Offices of old Times accuſtomed, to appoint Clerks and Miniſters within the ſame Courts, ſhall be charged and ſworn to appoint ſuch Clerks and Miniſters for whom they will anſwer at their Peril, which be ſufficient, faithful, and attending to that which pertaineth to them in Performance of the Buſineſs, as well of the King as of his People.*

This Act would have been extended farther, if it had been eſteemed neceſſary.

The Frame of both theſe *Statutes* does ſhew the Bent of the *Engliſh Conſtitution*, to provide for the Eaſe and Benefit of the *Subject*.

But the old Rule, *reſpondeat ſuperior*, will hold againſt the *Earl* in this Caſe, eſpecially when it appears by the Evidence of Mr. *Goldesbrough* the *Regiſter*, a Witneſs produc'd by the *Earl*, that this Practice of paying Money generally into the Hands of the Maſters, was not in uſe at his firſt coming into the *Regiſter's Office*, about the Time of the Revolution. So that the *Earl* impeach'd took upon himſelf the Diſpoſition of the *Suitors* Money, without a proper Ground and Juſtification.

And the Offence contained in this *Article* does not depend upon his Knowledge, that the Perſons admitted were inſufficient and unable ; but that the *Earl* did not require and take full Satisfaction and Evidence in a proper Manner, to make it manifeſt that *they* were able and ſufficient, as had been done by his *Predeceſſors* ; particularly when Mr. *Holford* was admitted a *Maſter*, his Father was obliged to ſettle a *real Eſtate* upon him of good Value.

The *Earl* ought either to have advanc'd Perſons equal to the great *Truſt* and *Charge*, or to have reduced the *Truſt* and *Depoſit* to the Condition and Circumſtances of the Perſon, as his *Predeceſſors* had done.

So that it is evident the *Earl* had only in view the Price and Profit of the Sale of the *Office*, which would riſe higheſt, upon the Inability and Unfitneſs of the *Officer*.

And it was therefore very properly ſaid by one of the *Earl*'s Council, that he weigh'd the *Maſters* before he admitted them.

But he weigh'd them only for the Sake of the Price they were to pay to himſelf ; and when he had done with them, he left them of very little Weight for the Security of the *Suitors*.

His falſe, tho' memorable *Declaration* in open *Court*, upon the 21ſt of *Jan.* 1723. explains his whole *Scheme*, when he publiſh'd from the Bench, *That the preſent Maſters were Men of as great Fortunes as any Set of Maſters had ever been.*

The Words were prov'd by Mr. *Waller*, and have not been contradicted by any *Witneſs*.

At that time Maſter *Dormer*'s *Deficiency* had taken Air ; and Mr. *Waller* upon his Examination ſaid, The Suſpicion of ſeveral of the Maſters was then ſo ſtrong, that this Publication rais'd Aſtoniſhment in the Hearers. But there was then a *Vacancy*, and an *Office* to be ſold. *Maſter Fellowes* died 19 *Jan.* 1723. and it became neceſſary to give the *Office* a Reputation.

And altho' the Inſufficiency of ſome of the *Maſters* had been decently intimated to the *Earl* by Mr. *Lightboun*, upon his ſeveral Propoſals, and the *Earl* may be preſum'd to know the general Apprehenſion of the World. Yet in this ſolemn Manner the *Earl* became an Officer to himſelf, to proclaim his own Market.

ART. XII. The Practice and Injury to the *Suitors* can hardly be more aggravated than is expreſs'd in the *Article* it ſelf.

And it has been prov'd in every Particular neceſſary to ſupport the *Article* ; and no Proof has been offer'd

offer'd on the Part of the *Earl* to contradict or extenuate the *Charge*, by making appear his Vigilance, or any Care or Regard to prevent the fatal Conſequences of the *Practice*.

The particular *Methods* of preventing this Fraud ſpecified in the *Article*, are only to ſhew the Practicability of ſome ſort of Meaſures proper to have been put in Execution, in order at leaſt to render the corrupt *Practice* and Abuſe difficult, altho' they had not prov'd compleat in all reſpects to redreſs and prevent them.

And by the *Witneſſes* call'd on the Part of the *Earl* himſelf, it was expreſsly prov'd, that ſome of theſe *Methods* had been practiſed with Effect in the time of his *Predeceſſors*, and that no *Loſs* had happen'd to the *Suitors* during that Regulation.

An *Account of the Suitors Caſh and Effects* was brought to the then *Lord Chancellor Harcourt* by Mr. *Holford*, as the *Account* of his *Predeceſſor*, before he was admitted; and he was thereupon ask'd if he would be bound by that *Account*, and ſtand charged accordingly? to which he agreed, and his Subſtance was ſufficient to anſwer it.

The *Caſh Money* was for ſome Years lock'd up in the Hands of the *two junior Maſters* in *Lord Chancellor Cowper's* time.

And it has been prov'd, that the *total Accounts* of *all the Maſters* have been taken *three* ſeveral times within a few Years; that is, *twice* by *Lord Cowper*, and *once* by *Lord Harcourt*.

And altho' the *Earl* ſeems either to doubt of his Authority, or of the Poſſibility of doing this in his own time; it can be prov'd, that he requeſted to ſee the *Accounts*, and to be inform'd of this Method, and accordingly had a Sight of the *Books*, and made an Appearance of putting it in Execution.

Beſides, the late *Accounts* deliver'd in by the ſeveral *Maſters* before the *Commiſſioners* named for that Purpoſe, ſhew, that ſuch an Attempt was practicable, and might have been compleated in a reaſonable Time.

But the *Earl* of *Macclesfield*, by his own Confeſſion, is guilty of a total Neglect of all Meaſures; and never proſecuted one honeſt and real Step towards the ſuppreſſing this Abuſe.

He might have given Directions, and made *Orders* for the ſecuring the *Suitors Effects*, in the ſame manner before the late *Inquiry*, as he has done ſince.

His *Secretaries* and *Agents* might have ſuperviſed the Obſervation of theſe *Orders*; and have attended to inſpect the compleat *Transfer* of the *Suitors Effects*, as well as to receive his *Lordſhip's* extorted *Præmium*.

And if after the *Earl* had taken theſe, or any other probable Meaſures, and the *Maſters* had broken their *Truſt*, the Fault would have lain upon the Diſhoneſty of the *Maſters*, and not upon the Connivance or Negligence of the *Lord Chancellor*.

But upon this *Article* the *Anſwer* of the *Earl impeach'd* is directly falſified. For he declares upon his *Honour*, upon that *Honour* which is communicated to him from the Privilege of the whole *Order of Peers* (but of which he himſelf has only made a Shew or Appearance) that he was totally ignorant of this *Practice*; although it appears in *Proof* to have been a matter publickly known during his *Adminiſtration*. It was one Inducement to Mr. *Kinaſton*, and the ſingle Temptation to Mr. *Thomas Bennet*.

This *Notoriety* is a reaſonable *Evidence* to charge the *Earl* with the Knowledge of a fraudulent Tranſaction propagated under himſelf; eſpecially when the Pretence of his Ignorance muſt ariſe from the wilful Neglect of his *Duty*.

But expreſs *Notice* is prov'd out of his *own Mouth* by Mr. *Thomas Bennet*; and farther, that the *Earl* had been uſed to proſtitute his *Honour* by a Courſe of Denial of this Fact upon former Occaſions.

For Mr. *Bennet* in his *Account*, which he had deliver'd in to the *Judges*, had inſerted this remarkable *Item*, viz. *Item* 9075 *l. in the Hands of Perſons of Ability*; which included the 7500 *l.* paid to Mr. *Hiccocks*, and the 1575 *l.* paid the *Chancellor* for his *Admiſſion*.

Mr. *Kinaſton* alſo in his *Account* had inſerted an *Item* to the ſame Effect for a *like Sum*.

Mr. *Thomas Bennet* went ſoon afterwards to the *Chancellor*, who enter'd into Diſcourſe with him thereupon, and ſaid: *I am ſorry you have given in your Account in this manner; it was the worſt way in the World: For all the World will now judge, that you paid for your Office out of the Suitors Money; and what hath been ſo much ſuſpected will now be diſcover'd, which I have always taken ſo much Pains to deny, whenever I was ask'd the Queſtion.* And wiſh'd *he had been acquainted with Mr.* Bennet's *Neceſſities before Mr.* Bennet *had given in that* Item; or to this very Effect.

The Probability of the Truth of this *Evidence* ſtands confirm'd from the Nature of the Thing, and the State of the *Account* itſelf, which has not been contradicted by the *Earl*; and ſeems farther ſtrengthened by an Opinion which the *Earl* had entertain'd, and which he dropt in his *Defence* on *Wedneſday*, viz. *That the Suitor was not the worſe by this Method; for by this Detention the former Maſter remain'd ſtill reſponſible, and* (as he obſerv'd) *by Mr.* Meller's *retaining ſome Part of the Suitors Effects, the Deficiency in Mr.* Borret's *Office was not ſo large.*

This ſeems a ſtrong Symptom of the *Earl's* Knowledge of the *Practice*, when it had obtained his *Approbation*.

But the *Money* retain'd by Mr. *Meller* was no part of the *Price* of the *Office*, but were other *Sums and Effects* which he retained in his Hands, and never paid over to Mr. *Borret*, upon the repeated Application and Requeſt of the *Suitors*, who doubted Mr. *Borret's* Sufficiency.

But ſuppoſe the former *Maſter* had died, or fail'd with theſe *Effects* in his Hands; how ſhould the *Suitor* have come to a full and legal *Proof* of this Tranſaction? and how many Perſons was he to proſecute, to diſcover and receive his own *Money?*

The Importance of this Part of Mr. *Thomas Bennet's* Teſtimony has given Occaſion to the *Earl* and his Council to object to his *Credit*; and an Endeavour has been uſed to make out, that Mr. *Bennet* has contradicted himſelf, and has deny'd here at *your Lordſhips Bar* upon his *Oath*, what he had formerly declared to other Perſons.

For that Mr. *Bennet* being ask'd (with an Intent to prove his Ability to pay the reſt of his Deficiency) *Whether he had not ſaid, that if Mr.* Hiccocks *would pay him back two thouſand Pounds, he would pay the reſt himſelf, Mr.* Bennet *denied he had ſo declared*; and yet, as they urge, the contrary is ſworn by Mr. *Holford*, Mr. *Thurſton*, and Mr. *Elde*.

In Anſwer to this Mr. *Holford* gave in Evidence, that Mr. *Bennet* ſaid, that *if Mr.* Hiccocks *would pay him back two thouſand Pounds, he would take Care that the reſt of the Money ſhould be raiſed.* But Mr. *Bennet* did not ſay, *he had the Money*, tho' Mr. *Holford* believed he had by his Manner of ſpeaking.

Mr. *Thurſton* depoſed, that Mr. *Bennet* declared *he would make up the reſt himſelf*: but afterwards told him, that *all he had in the World would not pay it.*

And Mr. *Elde* ſwears to the *ſame Effect.*

And

And this Teſtimony does not contradict, but rather confirms Mr. *Bennet*'s *Evidence*. For he made no direct *Declaration* of his *Ability* to pay the reſt, but, being liable to the *Suitors*, he ſeem'd to be willing to get what he could from Mr. *Hiccocks*.

Beſides, his Diſcourſe at theſe times cannot ſtand in Competition with his *Oath*, according to the common Rules of *Evidence*; and a *Witneſs's Credit* is not to be taken away upon an *uncertain Expreſſion*, proved by each of the *Earl*'s own *Witneſſes* in *different Words*, when from the Ambiguity of it there cannot poſſibly be any *voluntary Contradiction*.

But the *Commons* will confirm the Truth and Fairneſs of this Teſtimony of Mr. *Bennet*, by proving that the *Earl* had expreſs'd the ſame Concern and Diſlike of the Manner of theſe *Accounts* in reſpect of theſe *Items* to others, before any *Parliamentary Inquiry*.

There is likewiſe another Matter of Fact, which aſſiſts the Proof of this Article, which is, That the *Price* of the *Office*, and of the *Admiſſion*, are comprehended in the *Accounts* of the *Maſters Deficiencies*, and make the greateſt Part of Mr. *Bennet*'s *Deficiency*, and near a *Moiety* of Mr. *Kinaſton*'s.

Which manifeſts the Danger and Injury of this unjuſt Practice to the *Suitor*, whoſe Eſtate is thereby put upon the Hazard of the *Maſter*'s good or bad Succeſs, and his Property loſt with a *deficient Maſter*.

And here the *Corruption* and *Misbehaviour* of the *Earl* appear with the higheſt Aggravations.

The extorted Profit made by the *Earl* is raiſed out of thoſe *Effects*, which are depoſited in the *Court* upon the *Faith* and *Honour* of the *King's Adminiſtration* under the Care of the *Chancellor*, as *chief Truſtee*, by whoſe Connivance (if not Conſent) they are thus imbezzled; and the miſerable *Suitor* muſt either ſit down with the *Loſs*, or be forced to expend his little remaining Subſtance in a tedious *Proceſs* to recover back his *own Eſtate* thus waſted and converted by the *Maſters*.

Unneceſſary Delays and Protractions of *Cauſes* are the unavoidable Conſequences of this *Practice*; and in this manner the Buſineſs of the *Court*, and the Profits of the *Maſters Offices* have been encreaſed by the Purſuit of the Parties after their own Effects, which in the Concluſion terminates in ſo heavy a *Loſs*.

The late *Orders* made upon the *Petitions* of Mr. *Hiccocks* and Mr. *Rogers* ſince the *Impeachment*, and ſome ſince the *Tryal* commenced, tho' not proved to have been as yet comply'd with, and at beſt are but Depoſits to attend the Event of the Conteſt between the former and the preſent *Maſters*, have been made uſe of by the *Earl* in his *Defence*; which is a new Attempt in him to make a falſe Shew and Appearance of Reſtitution and Satisfaction.

Altho' if it was a real and a compleat Return of the *Principal Money*, it would be a very ſmall Excuſe and Extenuation for the vaſt Prejudice done to all the *Suitors* of the *Court*, by the locking up their *Money*, *Effects* and *Securities*, and ſtopping the *Payments* thereon for ſo many Months, beſides the Loſs of *Intereſt* on the *Caſh*, and their being hinder'd from the *Employment* of their *Money*.

The *Earl* has not adventured to enter into a particular Diſcharge of the *total Deficiency* aſſigned by the *Commons*, upon the *Evidence* of Mr. *Thompſon*, and collected from the *Accounts* ſtated upon the late *Inquiry*, amounting to more than *one hundred thouſand Pounds*. Nor has he given any *Anſwer* to the great *Loſs* which the innocent *Suitors* ſuſtain by the Inſolvency of the two deceaſed Maſters, *Dormer* and *Borret*.

This *great Confuſion* and *Damage* brought upon a *Court*, where the Eſtates of the moſt wealthy Subjects, as well as of leſſer People, do ſooner or later come, became a *National Concern*, not merely from the Extenſiveneſs of the *Loſs* to the particular *Suitors*, but likewiſe from the apparent *Danger* thereby ariſing to the *Publick*.

This *general Ruin* awaken'd the Care and Zeal of the *Commons in Parliament* for *Juſtice* to their *Fellow-Subjects*.

This introduced the *Charge* againſt the *Earl* in the *Twelfth Article*, which has been proved as it is alledged, *viz.* That *by this unjuſt and fraudulent Practice, the corrupt Profit made by the Earl upon the Sale of the Offices of Maſters in Chancery, has in Conſequence been raiſed and received by him out of the Effects of the Suitors of the Court, for whom he was intruſted; in Breach of the Truſt repoſed in him for the Preſervation of the Eſtates and Effects of the Suitors, to the Diſhonour and Diſcredit of the Court, and to the great Injury and Defrauding of the Suitors, in a Court of Equity eſtabliſh'd for their Relief and Protection.*

My LORDS,

If the *Miſdemeanours* of which the *Earl impeach'd* ſtands *accuſed* were not *Crimes* by the *ordinary Rules* of *Law* in *Inferior Courts*, as they have been made out to be; yet they would be *Offences* of a *publick Nature*, againſt the *Welfare* of the *Subject*, and the *Common Good* of the *Kingdom*, committed by the *Higheſt Officer* of *Juſtice*, and attended with ſo *great* and immediate *Loſs* to a Multitude of *Sufferers*; and as ſuch, they would demand the Exerciſe of the *Extraordinary Juriſdiction* veſted in *your Judicature* for the *Publick Safety*, by virtue whereof *your Lordſhips* can inflict that *Degree and Kind of Puniſhment* which no other *Court* can *impoſe*.

When theſe *Offences* have been proved upon the *Earl impeach'd*, of what Conſideration in Judgment can the *Earl*'s miſtaken and miſplaced *Charities* be? Can they alter the *Facts* charged upon him? or turn *Extortion* and *Fraud* into Liberality and Piety? Can the Merit of a few private Good Works attone for the Plunder of the *whole Body of the Suitors of the Court of Chancery*, upon whom this *Earl*, by his *Misbehaviour*, has brought a *Deficiency* of *one hundred and eight thouſand Pounds?*

He depends upon the Prayers and Wiſhes of thoſe few, who have been the Partakers of his *Bounty*, without being Sufferers by his *Crimes*: But the *Voice* of the *Commons* for *Juſtice* againſt this *Great Offender*, not only includes the Complaints of the *particular Sufferers*, but the *Accuſation* of an *injured Nation*, whom the *Earl* had endeavour'd to cut off from the *Protection*, which ought to be deriv'd to them from the *Father of his People*.

The *Commons* having now maintain'd the *Truth* and *Juſtice* of their *Charge* againſt the *Earl impeach'd* upon theſe *Articles*, leave him to *your Lordſhips* juſt Determination.

Mr. LUTWYCHE.

My LORDS,

I am commanded to aſſiſt in the Reply; and ſince I was obliged to bear my Share in this Proſecution, I was willing it ſhould be ſuch as would give me an Opportunity of hearing what would be ſaid and proved in the *impeach'd Lord's Defence*, before I ſpoke freely upon the Matters in Judgment before your Lordſhips.

And

And I may now venture to ſay, as he was unfortunate to bring ſo heavy a Charge upon himſelf, he has ſtill been more unfortunate in his Defence; I ſubmit it to Your Lordſhips Obſervation, whether any Part of the Evidence offered by the Managers has not been confirmed, nay enforced upon him, by his own Evidence; and ſome of the Charges upon him he has endeavoured to evade by ſuch Excuſes and Arguments, as have made even his Defence criminal.

My Lords, Upon the Examination of the firſt Witneſs produced on the Part of the Commons, his Lordſhip was pleaſed to make it a Queſtion whether he took the Oath directed by the Statute of 12 *Richard* II. The Objection ſeemed to be, that tho' the Statute was read, and his Lordſhip kiſſed the Bible, yet he was ſworn to nothing. This was ſo ſurprizing to all that heard it, and the Report of it raiſed ſuch Indignation, that it might have been expected his Lordſhip would have drawn a Veil over this Part of the Caſe, and have taken Care that it ſhould not be mentioned again; but inſtead of that, his Councel, nay he himſelf, have thought fit to bring this Point into Diſpute in his Defence, and his Lordſhip does not even yet fully own that he took the Oath.

The Statute has been repreſented as obſolete, read in Old *French*, and not regarded, and the Oath not duly adminiſtred; that the Officer ſaid nothing to his Lordſhip, nor he to the Officer.

The Witneſs told Your Lordſhips, that at a Meeting of the Great Officers every Year in the Exchequer, this Statute was read, and they immediately kiſſed the Book; and that this was the uſual Method of taking the Oath preſcribed by that Statute.

My Lords, I would obſerve, that if there had been any thing in the taking of the Oath that his Lordſhip thought not regular, it was his Duty, who was the Chief of that Aſſembly, to put them in a right Method agreeable to the Statute: And therefore this Objection is very extraordinary to come from him.

It is a dangerous Practice for any one to make a Shew of taking an Oath, and yet by ſome nice Diſtinctions endeavour to perſuade himſelf or others that he is not ſworn.

I do not know but moſt of the Old Oaths that are taken, may by the like Arguments be evaded, as well as this; the very Oath of Office ſet forth in this Lord's Anſwer is, *You ſhall ſwear*, &c. and in that Caſe a nice Diſtinguiſher may as well ſay, that he repeated nothing, and that there are not Words *de præſenti*, whereby he is ſworn. But where is the Defect in adminiſtring this Oath? The Officer reads out of the Statute, That the Chancellor, Treaſurer, *&c.* ſhall be ſworn, and then they kiſs the Book.

I do not ſee there is much Difference between ſaying, The Chancellor, Treaſurer, *&c.* ſhall be ſworn (they being at the ſame Time preſent) and ſaying, *You* the Chancellor, Treaſurer, *&c. ſhall ſwear*.

I ſhall therefore have the Charity for the Noble Lord to think and take it for granted, that he was ſworn as the Statute required, and that he underſtood the Statute, tho' it was read in Old *French*, and that he did not prevaricate, when he did this ſolemn Act.

Suppoſing therefore that the Statute 12 *R.* II. is in Force, and that the Oath was really taken; the next Conſideration is, what the Law is upon the ſeveral Facts and Circumſtances proved againſt the impeached Lord in Relation to his ſelling the Offices of Maſters in Chancery.

The Anſwer put in to the Charge of the Commons ſays, The Maſters freely and voluntarily ſent a Preſent without admitting any particular Sum; we ſay that particular Sums (and thoſe very exorbitant) were inſiſted on, and a Bargain driven for the Offices, as much as could be in any Caſe by way of Brokage; nay the very Benefit of having the Suitors Money comes into the Conſideration of the Price.

The Words of the Statute of *R.* II. are general, and in Point of Reaſon it ſhould extend to this Caſe above others; becauſe the Offices of Maſters in Chancery do not only concern the Adminiſtration of Juſtice, but are in ſome Meaſure judicial; they tranſact a great Part of the Buſineſs of the Court, and have uſually been in Commiſſion together with the Maſter of the Rolls, and the Judges, for hearing of Cauſes.

Lord Chief Juſtice *Coke* in his *Third Inſtitutes*, p. 145. places this Offence of ſelling Offices under his Chapter of Bribery, where he ſtates the Definition of Bribery to be, *When any Man in a judicial Place takes any Fee or Penſion, Robe or Livery, Gift, Reward, or Brokage of any Perſon that hath to do before him any way, for doing his Office*, &c. He comments upon the Words of this Definition and more particularly upon thoſe Words, *of any Perſon that hath to do before him any way*, and he takes Notice that it is not confined to taking Money, where a Suit is depending; but alſo where any in a judicial Place doth any thing for Gift or Reward by Virtue or Colour of his Office, tho' there be no Suit at all depending.

For Example, (ſays he) *If the Lord Treaſurer for any Gift or Brokage ſhall make any Cuſtomer, Controller, or any Officer or Miniſter of the King; this is Bribery: For he ought to take nothing in that Caſe by the Statute of* 12 R. II. This Example alſo proves, that the Statute is not confined to the Conſtruction that has been endeavoured to be put upon it, that it relates only to Caſes, where the Chancellor, Treaſurer, *&c.* meet together, as they do, when they nominate Perſons for Sheriffs; for the Example is of the Lord Treaſurer alone.

But, My Lords, we inſiſt upon it that this as well as other Statutes (that have been mentioned) are but Declarations, and further Remedies for what was the Common Law. The Caſe that was cited out of *Moor*'s Reports, 781. takes it to be ſo, of a Sheriff ſelling the Office of Gaoler, and his Bailiwick; but there was an Objection made to the Report of that Caſe, that it ſays the Statute, 4 *H.* IV. *c.* 5. gives a Penalty certain and pecuniary; whereas that Statute gives no certain Penalty, and therefore it might be a right Reſolution upon that Statute. But the Declaration of the Court, upon which the Party was fined, was becauſe the Offence was *malum in ſe*; and tho' that Statute of 4 *H.* IV. gives no Penalty, yet I think the Statute 23 *H.* VI. *c.* 10. does give a Penalty of 40 *l.* in the ſame Caſe of a Sheriff, and yet the Party was fined at the Diſcretion of the Court. That ſame Caſe is alſo reported in *Noy*, 102. where he takes no Notice of any Penalty, and the Report is in theſe Words: "*N.* was Sheriff of *Nottingham*,

" 43 *Eliz.* and took Money for the Offices of " Gaoler and Bailiwick, and he firſt gave them " to his Servants, who ſold them, but he himſelf " had the Money." And he was fined for that, for it is contrary to 4 *H.* IV. *cap.* 5. And alſo by the Court, That that is a Corruption, and a great Cauſe of Oppreſſion in the Officers, and ſuch Sale of Offices is *malum in ſe*, and fineable.

My Lords, I think the impeached Lord has advanced a very dangerous Poſition upon this Point. He is pleaſed to ſay, The Publick has nothing to do to enquire about any thing, but whether the Officer be a good Officer; that if he be ſo, the Publick is not hurt, though he gives the Chancellor Money for his Place. Here I preſume he was ſenſible that it might be objected, that the ſame Argument would hold for taking Money in a Cauſe before him, provided it was a good Judgment: And therefore was pleaſed to ſay, that the Difference between this Caſe and taking a Bribe for Judgment in a Cauſe is, That in the one Caſe the Party has a Right to have Judgment, but in the other Caſe no Man has a Right to his Favour or Recommendation, unleſs upon Terms. This is very extraordinary, and the ſame Argument would prove, that it is lawful for him to take Money from every Judge that comes into *Weſtminſter-Hall*. It is well known, that the Chancellor generally recommends in that Caſe, and yet it might there be ſaid, What is the Publick the worſe, provided he is a good Judge? Surely this is ſuch a Doctrine, as is not fit to be proclaimed to the World, and would tend to Univerſal Corruption.

My Lords, There was a very extraordinary Precedent cited out of *Madox*'s Hiſtory of the *Exchequer*, p. 43. where he ſays, in the Reign of King *Stephen*, *Geoffery* the Chancellor fined in 3006 *l.* 13 *s.* 4 *d.* for the King's Seal. This the Author underſtands to be a Fine then lately made with the King for the Office of Chancellor, or to have the keeping of the King's Seal. The Author himſelf obſerves, that this Precedent may juſtly ſeem ſtrange to us at this Day. And truly ſo it may, for in the Inſtance before Your Lordſhips, inſtead of paying Money to the Crown for the Office, here are very great Sums of Money paid by the Crown for an Acceptance of it.

But what does this Precedent tend to? Is it to prove the Office of Chancellor likewiſe ſaleable? This is ſo entirely new, that it wants a better Authority than this Precedent. It is a great while ago, if it were as the Author takes it to be. But the ſame Author, *p.* 42. ſays, That the Ancient Hiſtorians ſay little concerning the Duty of Chancellor, or the Nature of his Office; and it does not appear what the Buſineſs of his Office was at that Time, and nothing pertinent to the Matter before Your Lordſhips is to be collected from it. It is very ſtrange to ſuppoſe the Common Law, that is founded upon Reaſon, ſhould admit the higheſt Place of Judicature to be filled by thoſe that come in by ſuch corrupt Methods. And therefore we muſt beg leave to inſiſt, that it was an Offence at Common Law, as well as by the Statutes.

But ſuppoſe this Matter reſted only upon the Statute of *Edward* VI. I do not ſee but it is an Offence and Miſdemeanour in his Office of Chancellor to ſell theſe Places of Maſters in Chancery, and that he is anſwerable for it before Your Lordſhips as a Crime.

This Statute is made againſt buying and ſelling of Offices (for that is the Title of the Statute) And ſhall it not be an Offence cognizable before Your Lordſhips, for a Chancellor to put in Officers in a Manner that is condemned by Act of Parliament? When he by Virtue of the Office is to appoint, it is a Breach of his Oath of Office to appoint contrary to the Laws and Statutes of the Kingdom; but more eſpecially when he does it for corrupt Gain.

As to this Point, there is a great deal of Difference between one Officer ſelling to another, and a Judge that preſides in the Court, whoſe Duty it is to ſee that proper Perſons be appointed according to Law; inſtead of that, by this Method he ſhews them a bad Example on their very Admiſſion into the Office, and introduces them by Corruption in the firſt Inſtance, even by the very Act of Adminiſtring the Oath to them.

If this Great Officer ſhould be liable to no other Puniſhment, than an Incapacity of Nominating again to the ſame Office, the Act would have little Effect, and that Penalty would ſignify very little; ſince his own Office is during Pleaſure.

My Lords, I ſhall now proceed to reply to the Defence that has been made on the Thirteenth and all the ſubſequent Articles, which is the Province more particularly aſſigned to me.

The Charge in the Thirteenth Article is, That upon the Failure of *Dormer*, inſtead of taking proper Steps for obtaining a Satisfaction by regular and juſtifiable Methods, the Earl of *Macclesfield* neglected and declined thoſe Methods, and by many indirect Practices endeavoured to conceal the true State and Condition of the Office; leſt a publick Diſcovery of the Deficiency ſhould leſſen the unjuſt Gains he propoſed to make by the Sale of the Offices of Maſters in Chancery.

Upon this Article the impeached Lord has ſaid, he thinks it hard that theſe Miſcarriages ſhould be charged upon him, that this Affair about *Dormer* was a Misfortune that might have happened in any other Chancellor's Time, and not his Fault.

My Lords, If this Unfortunate Lord had done what became him in his high Station upon the Failure of this Maſter, God forbid that the Misfortune upon the Office ſhould any ways have been laid to his Charge; if he had been deſirous to have proceeded in a regular Method, he might very eaſily have done it; the Paths of Virtue and Juſtice would have been eaſy, he need not have found himſelf at the End of Four Years ſurrounded with ſuch inſuperable Difficulties.

If a fair, plain, and open Method had been taken for enquiring into and ſtating the Debt due to the Suitors, and the Account of *Dormer*'s Effects to ſatisfy it, there could have been no Danger to the Chancellor, whatever the Deficiency had been; but the Truth was, he could not part with thoſe vaſt and exorbitant Prices, to which he had at that Time raiſed the Places of Maſters; he found the ſweet of that Gain, and was willing to run ſome Hazard for it.

Tho' it was known that *Dormer* was gone, yet the *quantum* of the Deficiency was not known; and if it had been publick, the Money might

might probably have been taken out of the Maſter's Hands; a Parliamentary Enquiry might have enſued, and he might have loſt thoſe exorbitant Profits, which he afterwards actually made of thoſe Places; and theſe were the true Reaſons of the Concealment, and of the clandeſtine Proceedings that followed; nothing elſe hindered him from proceeding with Safety to himſelf by regular Orders of the Court. When Orders of Court are regularly made, there is a quick Way of putting them in Execution: It has been obſerved by the Councel in this Caſe, that it is more expeditious againſt an Officer of the Court, than another; and it is certainly ſo. There might have been a Sequeſtration againſt *Dormer* in a very little Time, and that would have intituled the Court to the Poſſeſſion of his Effects for the Benefit of the Suitors; which in a great Meaſure anſwers what was objected of the Neceſſity of *Dormer*'s coming over, and having his Liberty in Order to transfer his Stock. It was likewiſe ſaid, that it was neceſſary for the Diſcovery of his Effects; and yet when he did come over, he was never examined on Interrogatories. Surely if a Chancellor will take upon him to grant a Man his Liberty, when he is to make Satisfaction to the Suitors, he ought to take care that the Conſideration for the granting him his Liberty ſhould be performed.

But it is ſaid, What Harm has happened by not taking thoſe Methods?

My Lords, Here are two remarkable Inſtances of the Conſequences of this Neglect, by which it appears neither the Debt to the Suitors was known, nor the *quantum* of the Effects that there were to pay it.

Mr. *Edwards* told your Lordſhips, That the Deficiency of *Dormer* was at firſt about 25000 *l.* but that about a Month ago he diſcovered a farther Debt of about 1500 *l.* here there is a very great Deficiency concealed: On the other ſide the Effects of Mr. *Dormer*, that ſhould have gone towards paying this Debt, have been concealed and leſſened by the want of ſuch an Examination. Your Lordſhips heard the Evidence about the Parcels of Hops belonging to *Dormer*, that were worth Seven or Eight Hundred Pounds, that lay concealed Four Years, and were not diſcovered till lately. The Councel, indeed, ſaid, They were only a Parcel of muſty Hops that have been found. But if he had been examined on Interrogatories, in all Probability, he would have diſcovered them at firſt, and they had been worth 5 or 600 *l.* more than now, and the Suitors would have had the Benefit of them; 5, or 600 *l.* is a conſiderable Sum in Mr. *Dormer*'s Effects; and no one can tell but there might be other Inſtances of the like Kind.

What is the Anſwer his Lordſhip gives to this groſs and wilful Neglect? He tells Your Lordſhips, That he gave Directions to the two Senior Maſters to make Enquiry into *Dormer*'s Affairs and Accounts; *He left it to them*, and that they did not think it requiſite to examine him upon Interrogatories, or to uſe him with Hardſhip.

It is very extraordinary, that in a Matter of that great Concern, he ſhould content himſelf with a parol Direction; Orders from a Lord Chancellor, that are in Earneſt, are always in Writing; nor can they be enforced unleſs they are ſo; and therefore there muſt be ſome private Reaſons for theſe extraordinary Proceedings.

Another Thing that was inſiſted on, was, That the Earl (as he expreſſes it in his Anſwer) was made to believe that the Maſters would make good the Deficiency. What Reaſon had he to believe it? They never told him ſo; in a Matter of that Moment he had no reaſon to depend on an hear-ſay Evidence. He knew this was to be an Undertaking for the Debt of another; which could not by Law be Obligatory, unleſs reduced into Writing.

My Lords, I cannot account for theſe Things either in the Chancellor, or thoſe Maſters that had the Management of this Affair, unleſs it be (as the Article charges) to conceal the Deficiency of the Office, I mean, the *quantum* of that Deficiency; and that both the Chancellor and the two Senior Maſters thought it their Intereſt to do ſo, that all of them might ſhare in the Sale of the Places; the Two Senior Maſters were deſirous (as was mentioned by the Evidence) to ſell out, and the Chancellor was ready to receive his Share of the Money.

The Fourteenth Article is the Article about the Compoſition with *Wilſon*; and I muſt beg Leave to ſay, notwithſtanding what has been inſiſted upon, That it is a clandeſtine, unuſual, and unwarrantable Proceeding. We did take the Liberty on our Evidence to this Article to obſerve to Your Lordſhips, That the Petition of Mr. *Edwards* (on which this Compoſition is founded) takes notice that *Dormer* was indebted to the Suitors of the Court in ſeveral conſiderable Sums of Money; which ſhould have been a Caution to the Chancellor to have taken a more than ordinary Care in this Matter; but inſtead of that, there is not any one Order, Affidavit, Report, or any one Proceeding, that appears upon Record throughout this whole Affair.

The Report produced appeared to be the Original under Mr. *Hiccocks*'s Hand, which was a Demonſtration that it was not filed at the Time when the Order was made for eſtabliſhing this Compoſition, nor has been ſince.

My Lords, If there be but an Affidavit annexed to a Petition, care is uſually taken to order that it ſhall be filed; but it was not thought convenient in this Caſe to have any thing publick.

My Lords, The Earl of *Macclesfield* in his Defence to this Article begun with a Copy of a Judgment obtained by *Wilſon* againſt *Poulter*, that was ſigned 22 *December* 1721, and is for 18,774 *l.* whereas the Debt pretended to be aſſigned by *Wilſon*, is 22,060 *l.* So that tho' the Judgment was for all that *Wilſon* could pretend to (for ought appears) yet the Debt pretended to be aſſigned, is mentioned to be above 3000 *l.* more than what the Judgment is for; which is a farther Objection to this Compoſition, that did not appear before.

The next Point the Earl examined to, was the Sufficiency of *Poulter*, in order to prove the Aſſignment of *Poulter*'s Debt to be valuable; and there were two or three Brokers produced on this Account.

They were very unlucky Witneſſes to prove the Man's Ability, for they happened to be the very Perſons to whom he had declared his Inſolvency; one of them *(Scott)* was employed to go to Mr. *Wilſon* to Compound with him.

But then a very notable Diſtinction was taken by the Earl himſelf, That tho' *Poulter* diſcloſed

to

to theſe Witneſſes that he was Inſolvent, and that they were let into the Secret; yet all other People took him to be a good Man. The Evidence produced to prove this, were only thoſe that knew he was Inſolvent, and not One of all thoſe others that it is ſaid took him to be Solvent.

But we hope we have made it plain (and if it were neceſſary, we could make it clear beyond Diſpute) that *Poulter* was a broken Man at that time.

Another Objection was, How does it appear that a better Compoſition could have been made?

My Lords, Thoſe that preſume to take upon them, without a lawful Authority, to make a Compoſition to bind the Parties concerned, ought to make it appear to be a very good one; but on the contrary it appeared in this Caſe on the Examination of Mr. *Edwards*, that *Wilſon* (when he was afterwards charged with it) owned he had paid ſeveral others their full Debts; and 'tis notorious that he kept his Shop open till lately.

My Lords, The Anſwer to our Objection, That no notice was given to the Suitors, of this Reference about the Compoſition, carried in it (I thought) ſomething extraordinary. It was ſaid both by the Earl of *Macclesfield* and his Councel, That whatever the Lord Chancellor did, could not bind the Suitors, they not having notice, and therefore the Suitors might recover the whole from *Wilſon*, and no body was hurt.

My Lords, There is ſomething very ſhocking in this Excuſe, it ſtrikes ſome Horror to think, that this poor ignorant Man (*Wilſon*) ſhould be made to believe upon the Faith of a Court of Juſtice, that his Compoſition was in full Diſcharge of his Debt, if there was at the ſame time a Reſerve, that it might be ſet aſide for want of notice to the Suitors; the Excuſe ſeems to carry in it a greater Guilt than the Crime charged. This unfortunate Man (*Wilſon*) was living at the Beginning of this Tryal, but has ſince laid violent Hands on himſelf, and he is dead: I make no Reflection what might be the Occaſion of it.

My Lords, I did mention that upon the Abſolute Order made for Mr. *Edwards* accepting this Compoſition, it was ordered to be accepted with this Addition to the Order, *viz. Of which give Notice forthwith.* I mentioned it, that the Earl might have explained what he meant by directing Notice after the Compoſition was ordered to be accepted, or to whom Notice was intended to be given; I have heard no Anſwer to that, but what the Earl was pleaſed to ſay about the Articles, that on reading them he thought he had been charged with compelling Mr. *Edwards* to accept of a Compoſition without Notice to him; whereas it was done on the Petition of *Edwards*. My Lords, the Notice ſhould have been given to the Suitors, and that before the Compoſition was ordered to be accepted; that is what the Article charges, and what the Managers inſiſt on, and no Anſwer is given to that Objection.

It was ſaid, That if it had been ſet down to be heard in the ordinary Courſe (it being the Third of *Auguſt*) in Vacation-Time, it could not have come on till the next Term.

I believe that Lord knows it has very often happened, that particular Petitions have been heard in Vacation-Time, if Neceſſity required it; and I don't underſtand why there needed to be ſuch a Fondneſs for having this done ſo much in haſt, unleſs it were for the Purpoſes charged in the Articles. There was likewiſe ſomething ſaid by the Earl of the ſtriking out of the Prayer of Indemnification, that if it were juſtifiable, it needed no Order to indemnify, and if it were not juſtifiable, it ought not to be in; but what we ſay is, that it looks like a Diffidence whether it was juſtifiable or not, and ſince it was put into the Prayer of the Petition that Mr. *Edwards* might be indemnified, if the Chancellor thought it not juſtifiable, he ought to have let Mr. *Edwards* know it, as much as he ought to have let Mr. *Wilſon* have known that the Compoſition would not be good without the Suitors being Parties. As there is no tolerable Account given for ſuch an extraordinary Proceeding, we ſubmit to Your Lordſhips, whether it is not rightly charged to be for the unlawful Purpoſes mentioned in the Articles. If a Commiſſion of Bankrupcy had been taken out againſt *Wilſon*, the *quantum* of the Debt to *Dormer*, and conſequently of the Loſs of the Suitors muſt have been known, and other Suitors might have been alarmed, and a thorough Reformation might have happened; which might have ended in the taking away the Money from the Maſters, and the Price of the Places would have been lowered, which was always moſt carefully avoided.

My Lords, I now proceed to reply to the Defence made on the Fifteenth, Sixteenth, and Seventeenth Articles.

The Fifteenth Article is, That after the Failure of *Dormer*, the Earl of *Macclesfield*, in order to carry on his corrupt and unjuſt Purpoſes, and to conceal the Deficiency, did call for the Accounts of the Maſters, not with any Intent of Examining them, or to ſecure their Effects, but to terrify the Maſters and oblige them to contribute 500 *l.* apiece; and after that Purpoſe was ſerved, did not oblige them to bring in their Accounts.

The Sixteenth is, That he perſuaded the Maſters to pay the 1000 *l.* ordered to Mrs. *Chitty* for the like Purpoſes.

And the Seventeenth is, For letting all the Money belonging to *Dormer* be paid away to ſome of the Suitors, without obſerving a Proportion, to which all were equally intitled.

To the Fifteenth the Earl of *Macclesfield* ſays in his Anſwer, That he did really call for the Accompts with an Intent to examine them, and that he might regulate Matters, and that after the 500 *l.* was paid, ſtill he called for the Accompts; for that there was a Letter ſent in *November* 1721, to the Maſters inſiſting upon having them; but as to this ſecond Letter, as Mr. *Cottingham* did not ſpeak at all poſitively to it, but that *he believed, but could not be poſitive, that it was ſent, and that he had taken no Memorandum of it*, &c. we muſt beg leave to acquaint Your Lordſhips, that this ſecond Letter was never ſent; and every One of the Maſters will give Your Lordſhips that Account: But ſuppoſing it had been ſent, can any one imagine that the Chancellor would not have purſued that Direction, and have had thoſe Accompts, if he had really intended it? What is the Excuſe at laſt? He had required ſo many Particulars in the Accompts, that it was almoſt impracticable to do it. My Lords, if the Charge in the Articles be true, it anſwered the Deſign the better, that it ſhould be difficult; we ſay it was done to get from the Maſters 500 *l.* apiece to quiet Matters for the preſent,

ſent, and when that was done, there was no more Uſe made of that Order. But what is moſt wonderful of all is, that tho' in Four Years Time it was ſo difficult a Work that it could not be done; yet when the Committee of Council had called for the Accompts, the Earl of *Macclesfield* uſed ſuch Diligence, that he procured them to be ready in a Week's Time; and tho' all the Directions and Particulars which he had required, were not obſerved, yet it ſeems they were all that were neceſſary and ſufficient, and it was hoped ſuch as would prevent a Parliamentary Enquiry.

The Earl in his Anſwer values himſelf much upon this Expedition, not conſidering how inconſiſtent it was with the Difficulties which were made an Excuſe for not having it done Four Years before.

It was inſiſted on upon this Head, that Mr. *Lightboun* did not pay, and yet he brought in no Account; but however Nine of the Maſters did pay, and the Chancellor well knew it would have looked very partial to have proceeded againſt one ſingle Maſter, and not the reſt; that would have been too barefaced, and ſo Mr. *Lightboun* eſcaped too; beſides there was not a Total Deſpair even of him, for he was ſeveral Times afterwards ſpoke to about making good his 500 *l.*

It was ſaid likewiſe, the Buſineſs of the Court muſt have been at a Stand, if theſe Accompts had been purſued.

My Lords, If it had been ſo, it had been more for the Reputation of the Court, and for the Benefit of the Suitors in general, to have had ſome Time employed about this neceſſary Work; and if there had been a willing Mind, one long Vacation would have been ſufficient without any Interruption to the Buſineſs of the Court.

After all theſe Excuſes the Earl is pleaſed to ſay, if he had taken the Accompts, it would have ſignified nothing unleſs he went farther.

My Lords, If he never begun, he could never bring any Thing to Perfection; and in his Anſwer he confeſſes, it was neceſſary to have the Accompts in Order to make Regulations. But after all he is forced to come to this Concluſion (as he ſays in his Anſwer) *to go on in the ſame Road his Predeceſſors had done*; tho', by the way, it has appeared to Your Lordſhips that it is not the ſame Road; for his two immediate Predeceſſors did call for the Accompts, and had them.

The Sixteenth Article is grounded on the Perſuaſions to pay 1000 *l.* (ordered to Mrs. *Chitty*) to prevent a Parliamentary or publick Enquiry, and that the Earl afterwards paid the ſame himſelf to Mr. *Lockman*, &c.

My Lords, We called Six or Seven Witneſſes to this Article, and did obſerve at that Time the Earl in his Anſwer ſaid, He believed he did not perſuade the Maſters to pay this 1000 *l.* And his Lordſhip was pleaſed to ſay, when he ſpoke in his Defence, That he ſtill believed, that he did not perſuade them to pay it.

My Lords, It is very ſtrange that there ſhould be any Doubt made of it; the Occaſion of the Meeting, and the Nature of the Thing plainly ſhews it. Firſt Mr. *Cottingham* went to Mr. *Lightboun*, and told him, that there was a preſent Occaſion for this 1000 *l.* that it was propoſed he ſhould pay the 500 *l.* (which he ſhould have paid before) and the other Maſters 50 *l.* apiece, which would make up the 1000 *l.* When the Maſters were going to the Lord Chancellor's, they diſcourſed among themſelves, that their going was upon Occaſion of another Call for Money.

When the Chancellor came to them, he mentioned the preſſing Neceſſity there was for paying this 1000 *l.*

Mr. *Edwards* particularly ſays, that he repreſented to them this Matter of 1000 *l.* as *a Thing of Conſequence, a very preſſing Occaſion of a Sum of Money immediately to be paid; he ſaid, I do not know what the Conſequence may be; Clamours begin to grow ſtrong. I do not know but it may come to a Parliamentary Enquiry.* Mr. *Lovibond* ſays, that my Lord told them, *This was a Matter that required great Expedition, for one that belonged to the Prince's Court,* and all of them underſtood there was a Propoſal to pay the 1000 *l.* and that was the Occaſion of the Meeting. All the Maſters that have been examined on this Head confirm it.

What is it that is to evade all this Evidence? It is only this poor Shift, I did not (ſays the Noble Lord) perſuade them to pay the 1000 *l.* but I perſuaded them to pay all *Dormer*'s Deficiency.

My Lords, There is no Evidence to ſupport this Diſtinction, but on the contrary, there were Arguments uſed for the advancing of this Money. And if he was not able to perſuade them to pay this 1000 *l.* there was no Likelyhood of prevailing on them to pay the whole.

My Lords, Another Matter inſiſted on in Relation to this Article was, that the Money, which was paid to *Lockman*, was paid out of Compaſſion; *Lockman* ſays he took it as his Due, and I think he was in the right; he gave an Aſſignment of the Order, when it was paid; and certainly this can in no Sort be added to the Liſt of this Noble Lord's Charities that he has been pleaſed to publiſh; but the Diſcourſe with the Maſters before ſhews plainly what were his Inducements for paying it; he feared the Conſequence if it were not paid, and choſe rather to do it, than venture thoſe Enquiries that the not paying it might occaſion.

I think the Earl ſeems to agree in Subſtance to the Declaration at the End of the Articles, That was made the Fifth of *December* laſt, *viz.* that he *had heard of* Dormer's *Deficiency, but knew nothing of it but as Publick News*, &c. A ſtrange Declaration to come from the Bench at the End of Four Years, during which Time were all theſe Tranſactions about *Dormer*'s Deficiency! Then it was that he was pleaſed to refer it to Mr. *Edwards*, to enquire whether there was likely to be a Loſs of any Money, when at that Time he knew very well that all *Dormer*'s Money was gone, and Mr. *Edwards* had none in his Hands.

The Seventeenth Article is for ordering and permitting *Dormer*'s Money to be paid out without Regard to Proportion; this was a manifeſt Injuſtice, and ſo diſcourſed of between this Lord himſelf and Mr. *Edwards*; and the Anſwer that is given to it is, That we have produced but Four Orders made by the impeached Lord for ſuch Payments.

My Lords, I think it not material whether the Orders were made by himſelf, or the Court; he was warned ſeveral Times of the Conſequence; he took the Management of theſe Matters to himſelf, and let Things run on, hoping the Money would laſt his Time; and now all

is gone, and paid away, and many diſtreſſed People are left without any thing. In the Cauſe of *Jett* and *Jones*, the Orders that were read, appeared to be made by this Lord himſelf; and the Parties have been ſo lucky as to have got their whole Money, whilſt others are in the utmoſt Neceſſity without any Subſiſtance.

The Conſequence is, that the reſt of the Suitors, who were intitled to an equal Proportion, have no Remedy for it. What may be done for them in Charity and Compaſſion is of another Conſideration; but their legal Right is taken away by him that ſhould have protected them.

An Objection was made by the Councel, That there was no fixed Fund of *Dormer*'s Effects, from which to have ſettled a Rule of Proportion. This is excuſing one Fault by another: Firſt, Care is taken not to have an Accompt ſettled; and then that is made an Excuſe for not ſettling a Proportion.

The Eighteenth Article relates to the Maſters trafficking with the Money; which was as notorious, as that there was ſuch a Place as *Exchange-Alley*.

The Year 1720 has been mentioned both by the Earl and his Councel, and it was ſo fatal a Year, that ſurely, if a Reformation were ever to be made, it ſhould have been upon that Occaſion. I think there is but little Difference, whether they traded with the Money themſelves, or put it into another's Hands at high Intereſt, and permitted them to trade with it. Could any one imagine that *Dormer* let 24,000 *l.* lie in *Wilſon*'s Hands for nothing? Mr. *Cottingham* upon the Examination of my Lord's own Councel gave Evidence, that *Wilſon* inſiſted he allowed high Intereſt for it. And it was well known it was in the Power of all the Maſters to traffick with the Money, and this after expreſs Warning by one of the Maſters to the Chancellor not only by Word of Mouth, but by Letter written (as I take it) in 1722. But every Thing of a Regulation of that Kind was liable to Objection; one Thing that was propoſed was ſo eaſy to be done, that there is no Excuſe it was not complied with, which is in Relation to the Securities, by placing them in two or three Names, which would have prevented the Maſters from diſpoſing of the Securities.

This might very eaſily have been done. The only Anſwer that was given, was, that it would not anſwer all the Securities.

This was made a Reaſon for doing of nothing, and there was ſuch a Backwardneſs to do any Thing of this Kind, that the meaneſt and moſt trifling Excuſe was ſufficient to ſatisfy his Lordſhip, not to take any Step towards it.

My Lords, Upon this Article the impeached Lord was pleaſed to mention ſome of his Predeceſſors, and alſo his Succeſſors; as to his two immediate Predeceſſors, he doubts the taking the Accompts by him in the manner they did, would have been thought of no Uſe.

My Lords, I am apt to believe a good Uſe might have been made of it; it would have put a Check and Reſtraint upon the Maſters, they would have acted with more Caution, when they knew the Ballance was a Charge upon them, and that it might be called for at any Time; and if his Lordſhip had thoſe Accompts, I dare ſay he would have ſeen that there was ten Times as much Caſh in the Maſters Diſpoſal, as there was in one of thoſe Predeceſſor's Time. And it might have been of Uſe to him to have ſeen what prodigious Sums of Money were in their Hands, and how great the Danger was.

As to the preſent Commiſſioners, the Noble Lord was pleaſed to ſay, the Difficulties of making the Maſters Accompt have appeared by their Proceedings.

My Lords, They have been ſufficiently taken up with endeavouring to compel the Maſters to give Security for the Deficiencies incurred in this Lord's Time. The Difficulty was not ſo much in taking an Accompt, as in making good the Deficiency.

They have been forced to take what Security they could get from the Maſters from Time to Time, and I wiſh the Deficiency do not ſtill come out worſe than is expected; no one can yet ſay what it will be.

My Lords, The Nineteenth Article was founded on the Endeavours of the Lord impeached, to deceive His Majeſty in Council, by perſuading the Maſters to make falſe Repreſentations of their Circumſtances to His Majeſty, by a Subſcription to their Accompts, and by aſſiſting one another to make an Appearance of Ability.

This, My Lords, was the ſad Concluſion of this long Scene of Iniquity; when it was become neceſſary, and it was no longer to be avoided; that there ſhould be Accompts delivered in. There is an Attendance on the Chancellor; and one of the Maſters having concluded his Accompt with a Repreſentation of his Ability and Readineſs to pay the Money, the reſt are perſuaded to do it in the like manner, without ſo much as asking them concerning the Truth of it; and there is one Inſtance that was very remarkable, which was in the Caſe of Mr. *Lovibond*, that where he of his own Accord could go no farther, than to ſay he was able to pay or give Security to pay; that was not thought ſufficient by this Lord, becauſe it would imply a Diffidence that the Money was not then forth coming; and therefore thoſe Words about Security were not to be mentioned. Others of them that were no ways capable of producing the Money, were induced to make the like Subſcription.

When it was expected the Money ſhould be produced, then Mr. *Dixon* and Mr. *Cottingham* have a Meeting with the Maſters to conſult what was to be done; then it was that Propoſals were made for the Maſters to aſſiſt each other, and to get Goldſmiths Notes and other Effects to ſhew to the Judges.

It has been objected, that the Managers did not think fit to call Mr. *Cottingham* and Mr. *Dixon*.

My Lords, We called the Maſters that were preſent at that Meeting, who gave Your Lordſhips an Account of that Tranſaction, and it turns the Objection upon the impeached Lord, that he did not think fit to call Mr. *Cottingham* and Mr. *Dixon* (that were his Servants and Agents) to contradict that Evidence; if this Lord had no Concern in that Matter, he would certainly have called them to that Purpoſe, and his

not

not examining them to it greatly confirms our Evidence.

Your Lordſhips may remember the many Inconſiſtencies, Evaſions, Equivocations, and Inſufficiencies in his Lordſhip's Anſwer to the Articles of Impeachment, which have been obſerved and plainly made out by the Managers for the Commons.

My Lords, He was pleaſed to make a Diſtinction between an Anſwer to Articles of Impeachment, and an Anſwer to a Bill in Chancery; that the Plaintiff in a Cauſe had a Right to a full and plain Diſcovery, but that the Caſe before Your Lordſhips differs. My Lords, I would beg leave to mention, that there was an Inſtance of an Impeachment before Your Lordſhips, in which the Lord now impeached had a great Share in the Reply, wherein he laid very great Streſs upon the Inſufficiency and Evaſions in the Anſwer. The Perſon then impeached had very hard Names given to him on that Account, and *even his Silence was* inſiſted on as *a Confeſſion of his Crimes.*

As to the Noble Lord's Charities I beg leave to ſay, that as it is a great Addition to the Merit of Charity, to have it kept private, it was the more extraordinary theſe Charities ſhould be now publiſhed; becauſe I do not ſee they are any ways material to the Matters before Your Lordſhips. Here are plain Facts charged and proved, and if in a Caſe of this Kind theſe Charities are to wipe off the Charge, it is a Kind of Commutation that has not been before heard of. My Lords, he that would be the moſt meritoriouſly charitable, ſhould firſt be juſt. The Lord ſhould have firſt conſidered thoſe Suitors that he had injured, he ſhould firſt have made Satisfaction to them, and then have offered his Gifts.

Thus we have endeavoured to lay before Your Lordſhips the whole Circumſtances of this Caſe; there needs no Eloquence to aggravate the Crimes; I pretend to none; but the Cries of Widows and Orphans will have the moſt perſuaſive Eloquence, and when they have Juſtice on their Side, they will have Weight with Your Lordſhips.

My Lords, The Caſe before Your Lordſhips is founded on Corruption, and a Series of Fraud to ſupport that Corruption. The People had long murmured at it, but the Grievance increaſed at laſt to ſuch an intolerable Degree, that it became a National Concern, and there was an unavoidable Neceſſity of a Parliamentary Proſecution.

My Lords, The Commons hope they have done their Duty in bringing it here, and we hope Your Lordſhips will give ſuch Judgment, as will be conſiſtent with Your Lordſhips Honour and Juſtice.

Mr. *Serj. Pengelly.* My Lords, We ſhall beg Leave to call a Witneſs or two, the firſt to the Imputation endeavoured to be thrown upon Mr. *Thomas Bennet*'s Character, in Relation to the Diſcourſe that paſſed between him and the Earl. We ſhall ſhew that he declared it at that very Time, or ſoon after, the Lord had ſpoke it to him. We deſire alſo to examine Mr. *Lucas*, who applied for the Maſter's Place. It was inſiſted, That the Earl was offered 6000 *l.* and actually refuſed to take it; but took 5000 *l.* from Mr. *Elde* and Mr. *Thurſton* for the Maſter's Office: We ſhall ſhew how that happen'd.

Mr. *Richard Lucas* Sworn.

Mr. *Serj. Pengelly.* We deſire that you would inform my Lords, whether you made any Application to the Earl of *Macclesfield*, or to Mr. *Cottingham*, about coming into the Maſter's Office at the Time when Mr. *Elde* or Mr. *Thurſton* were admitted, and what paſſed.

Mr. *Richard Lucas.* My Lords, Upon the Death of Mr. *Fellowes*, being perſuaded by ſome Friends to make an Application for the Office vacant by his Death, I did go immediately to Mr. *Cottingham*; my Lord *Macclesfield* being then out of Town, I thought it proper to go to his Secretary.

Lord *Ch. Juſtice King.* Pleaſe to ſpeak up.

Mr. *Richard Lucas.* I ſay, upon the Death of Mr. *Fellowes*, I was perſuaded by ſome Friends to make Application for the Maſter's Place; and upon that, I went to Mr. *Cottingham*, and told him the Affair I came about. He told me, Mr. *Lucas*, you know you have formerly had ſome talk with me about an Affair of this Nature; it is to no Purpoſe for me to recommend you to my Lord, unleſs you bid more than formerly you have done. Upon that I immediately told him, I was ready to give 6000 *l.* There was ſome Talk paſſed between us beſides, but it being ſo long ago, and not expecting to be called to give an account of it, I cannot now recollect it. One Thing I can recollect, that he intimated to me, That my Lord *Macclesfield* had ſome Intentions of making ſome Orders, or doing ſomewhat that ſhould be for the Eaſe or Advantage of the Maſters; but his Lordſhip would not do it at that Time, becauſe it would look as if he had an Intention of making Advantage of that Vacancy. A Day or two afterwards I met Mr. *Cottingham* in the Hall, and asked him, If he had ſpoke to my Lord about me? He told me, he had; but that my Lord was pleaſed to enquire into my Circumſtances, and did think it proper that ſome Security ſhould be given by the Maſters; and I being immediately to be put in by his Lordſhip, it was the more incumbent upon him, to ſee what Security I was able to give. Upon that I waited upon him to know what Security was expected: He mentioned to me 10,000 *l.* Security. I told him, That after ſuch time as I had parted with 6000 *l.* I could not take upon me to ſay, I could myſelf make up a Security to the Value of 10,000 *l.* but what with the Aſſiſtance of Friends, and mine own Eſtate, I might poſſibly do it. Upon talking of the Matter with my Mother, ſhe was very willing to joyn in the Security. Upon that I wrote a Letter, I cannot remember whether it was directed to my Lord *Macclesfield*, or to his Secretary; but to one or the other it was. I ſent it by my Servant, and I was informed by Mr. *Cottingham*, That his Lordſhip had a Sight of it. But afterwards being uneaſy at giving ſo large a Sum of Money, and conſidering, from the Talk that then was, that theſe Maſters might come into Parliament, I was adviſed, and I thought it proper, to have ſome better Hold upon his Lordſhip, to make ſome Return, in Caſe any thing ſhould happen to leſſen the Value of the Place: Upon that, I did

did write a Letter, I cannot remember the whole Contents; but I pretty well remember the Subſtance, which was, That I would undertake to give the Security required to the amount of 10,000 *l.* I believe, I did alſo mention my real Eſtate, which was near 300 *l.* a Year, to be a Part of the Security, and I did add, That notwithſtanding the preſent Diſputes between the Maſter of the *Rolls* and the other Maſters, and the Talk there was of bringing it into Parliament, I was not at all uneaſy; becauſe I could ſecurely depend upon his Lordſhip's Generoſity, that he would take it into his Conſideration, in Caſe any thing happened amiſs in the next Seſſion of Parliament; I can't remember exactly the Words, but my Lord *Macclesfield* has the Letter, if I am miſtaken, his Lordſhip will ſet me right.

Mr. *Serj. Pengelly.* Upon this Letter of your Expectation of being repaired, if any thing happened, had you any Anſwer?

Mr. *R. Lucas.* The next thing I heard, was, That Mr. *Elde* was in the Place, and Mr. *Cottingham* was pleaſed to ſay, he was a particular Acquaintance of my Lords, and therefore had it.

Mr. *Serj. Pengelly.* When Mr. *Cottingham* told you this, what Anſwer did he return as to my Lord's Approbation of the Propoſal?

Mr. *R. Lucas.* He ſaid, to the beſt of my Remembrance, That my Lord was pleaſed that I offered 6000 *l.* at once, provided I would give Security, if that ſhould be thought proper.

Mr. *Serj. Pengelly.* Since you was diſappointed when Mr. *Elde* came in, what paſſed when Mr. *Thurſton* came in? whether did you renew your Application then?

Mr. *R. Lucas.* I was, with abundance of Regret and Fear, prevailed upon to renew my Application.

Mr. *Serj. Pengelly.* What were your Fears?

Mr. *R. Lucas.* My Fear was about the bringing this Matter into Parliament, and that I did not know what Effect that might have upon the Profits of the Place. Upon that, my Brother told me, he was acquainted with Mr. *Ellis*, his Lordſhip's Chaplain, and if I pleaſed, he would go to him, and get him to ſpeak to my Lord about it.

Mr. *Serj. Pengelly.* What Directions did you give to your Brother as to offering any thing, and upon what Terms?

Mr. *Ric. Lucas.* I cannot ſay whether my Brother had a direct Commiſſion from me to mention that I was then ready to give 6000 *l.* but it was my Apprehenſion, and the Apprehenſion of all thoſe that knew this Affair, that I ſhould not come in under ſo much; I am not very poſitive that ſuch a Direction was given. I did mention another thing to my Brother, to acquaint Mr. *Ellis*, that I had heard more of the Deficiencies in the ſeveral Offices of the Maſters, and that I was not without Apprehenſion, that if I ſhould give 6000 *l.* to come into this Place, I might from time to time be called upon for ſeveral Sums of Money in order to make good paſt Deficiencies; and I thought that it would be unreaſonable for me to be brought into any Contribution for making good thoſe Deficiencies, when I had no Concern in them. I then deſired it might be mentioned. As for the Anſwer, I never ſaw Mr. *Ellis*.

Mr. *Serj. Pengelly.* What Orders did you give to your Brother? Did you give him any Order to pay the Money without Conſideration of being liable to the Deficiencies?

Mr. *R. Lucas.* I gave him no Order at all, I thought it was not come to bear yet.

Mr. *Serj. Pengelly.* Was there any Thing paſſed after that?

Mr. *R. Lucas.* I conceive, my Lords, you won't think it proper for me to give an Account of what paſſed between Mr. *Ellis* and my Brother.

Mr. *Serj. Pengelly.* I deſire to know, whether your Brother had any Orders or Directions from you to go on?

Mr. *R. Lucas.* I have told you every Thing I can recollect; I only told him, I deſired him to ſpeak to Mr. *Ellis* to recommend me to his Lordſhip upon the Foot, I have mentioned, *viz.* on the Foot of the former Propoſals.

Mr. *Serj. Pengelly.* Had your Brother any Authority from you to give 6000 *l.* without being ſecured from the Deficiencies?

Mr. *R. Lucas.* Six thouſand Pounds was the Sum to be given, and I deſired my Brother to mention the Deficiencies, and that I ſhould not be underſtood to be ſubject to any of them.

Mr. *Serj. Pengelly.* Was it to be given abſolutely without Reſerve, or with Regard to be ſecured from the Deficiencies?

Mr. *R. Lucas.* I did deſire that the Buſineſs of the Deficiency might be explained, and that it might be underſtood that I would not be anſwerable for any of them.

Mr. *Edward Lucas* ſworn.

Mr. *Serj. Pengelly.* I deſire you would inform my Lords, whether you received any, and what Directions from your Brother, upon the laſt Vacancy, when Mr. *Thurſton* came in, of the making Propoſals for your Brother's coming into that Office?

Mr. *E. Lucas.* Soon after Mr. *Borret*'s Death, my Brother expreſſed an Inclination to me of ſucceeding in that Office: I told him, I had an Acquaintance with Mr. *Ellis*, my Lord *Macclesfield* Chaplain. And if he would give me any Commiſſion I would communicate it to Mr. *Ellis*, I believing that a proper Way of Communicating it to my Lord. My Brother did deſire me to go to Mr. *Ellis*, and to inform him myſelf, that he had ſo juſt a Senſe of my Lord's Honour and Generoſity, that he believed he might leave the Terms to be fixed by my Lord himſelf. I went to Mr. *Ellis*, and did tell him as my Brother had deſired me. Mr. *Ellis* ſaid, He did not much care to concern himſelf in the Affair; if it had been to recommend to a Living, it might be proper for him; but this was out of his Province. I acquainted him with what Steps my Brother had formerly taken, in order to obtain one of theſe Offices, and explained to him the Nature of the Thing, and perſuaded him to lay this Matter before his Lordſhip. Upon which he was then pleaſed to ſay, He would go to my Lord (who was at *Kenſington*) the next Day, and bring me an Anſwer.

Mr. *Serj. Pengelly.* Had he any Directions either as to the Price, or the Terms?

Mr. *E. Lucas.* I don't know of any Directions the had, either as to the Price, or the Terms.

Mr.

Mr. *Serj. Pengelly.* What did you ſay about the Security, and the Deficiencies in the ſeveral Offices?

Mr. *E. Lucas.* This was another Converſation, about a Week, or Ten Days after; after Mr. *Ellis* had brought me an Anſwer, then I remember my Brother gave me Directions to conſult with Mr. *Ellis*, whether it was not proper to make my Lord a direct Offer of 6000 *l.* but then it would be reaſonable, that he ſhould be indemnified or ſecured from any Damage, or Deficiency by any of the Precedent Maſters; and that he ſhould not be called upon to make good any ſuch Deficiency. I told Mr. *Ellis* this, and he ſaid, there was no Room for this, there might be Deficiencies in ſome other of the Offices, but he had heard, there was no Deficiency in Mr. *Borret*'s Office. I had likewiſe heard ſo, but whether there was a Deficiency or not, I could not tell; my Brother was willing to enter into a Treaty with my Lord upon theſe Terms.

Mr. *Serj. Pengelly.* Did you hear any Thing more about it?

Mr. *E. Lucas.* About a Week after Mr. *Ellis* writ to me, That my Lord *Macclesfield* had approved of Mr. *Thurſton.*

Mr. *Serj. Pengelly.* Pleaſe to recollect, whether your Direction was about *Borret*'s Deficiency only, or about all the Deficiencies in general?

Mr. *E. Lucas.* My Directions from my Brother were about all the Deficiencies; *Dormer*'s Deficiency ran in his Head, and he thought it unreaſonable, that he ſhould be obliged to contribute to any Deficiency precedent to his coming in Maſter.

Mr. *Serj. Pengelly.* Did you communicate this to Mr. *Ellis?*

Mr. *E. Lucas.* I did communicate it to Mr. *Ellis*; if not in ſuch expreſs Terms, yet to that Effect, that it was unreaſonable, that my Brother ſhould be obliged to contribute to make up thoſe Deficiencies that were preceding to his being Maſter; I am ſure, I added thoſe Words, That he ſhould not be obliged to contribute to make up thoſe Deficiencies that were precedent to his being Maſter.

Earl of *Macclesfield.* My Lords, I ſubmit, whether it be not proper, that Mr. *Ellis* be called before this Mr. *Lucas* goes away.

Mr. *Ellis* called, but not examined again immediately.

Earl of *Macclesfield.* Mr. *Lucas*, I deſire that you would declare to my Lords over again, what you have given in Evidence.

Mr. *E. Lucas.* The firſt Time I ſaw Mr. *Ellis* was at my Mother's Houſe, immediately after Mr. *Borret*'s Death, I then told him of my Brother's Intention to purchaſe a Maſter's Place, and that my Brother had ſo thorough a Senſe of my Lord's Honour and Generoſity, that he would leave the Terms to my Lord himſelf. Mr. *Ellis* was not at firſt inclinable to concern himſelf in it, but upon telling him what Steps my Brother had taken in Regard to it; he ſaid out of Friendſhip to me he would engage in it, and go to my Lord, and bring me an Anſwer. This was the firſt Converſation. Mr. *Ellis* did the next Day bring me an Anſwer from my Lord.

Mr. *Serj. Pengelly.* What was the Anſwer my Lord ſent?

Mr. *E. Lucas.* The Anſwer that Mr. *Ellis* brought was, That my Lord had no Objection to my Brother, he did remember that he had been formerly recommended to him, but that there was ſome other Perſon propoſed by ſome of the Maſters, of whom he expected a farther Recommendation, and could not now give any other Anſwer to it: He alſo told me, That he apprehended, if that Perſon did not ſucceed, my Brother might have the Refuſal. I ſaid it was indifferent whether my Brother then ſucceeded, or not; becauſe my Lord told him, That one or two Maſters were inclinable to ſell, and if they did, he might have an Opportunity of buying of thoſe Maſters. This paſſed on the Second Converſation.

Mr. *Serj. Pengelly.* Go on.

Mr. *E. Lucas.* The Third Converſation was ſometime afterwards at my Lord *Macclesfield*'s own Houſe in *Lincoln's-Inn-Fields.* I went by my Brother's Directions meaning to conſult with Mr. *Ellis* in a friendly Manner, whether he did think it adviſeable to make his Lordſhip a direct Offer of 6000 *l.* I ſaid if he gave it, it was reaſonable, that he ſhould be indemnified from any Damage that ſhould happen by Reaſon of the Deficiency in any of the Offices, and not be obliged to contribute towards making them up; he ſaid my Lord had not ſpoken to him about that, that he could not have every Opportunity he deſired to ſpeak with him; that as to the Deficiencies, he had heard there was none. I ſaid, I had likewiſe heard ſo; but whether there was or no, my Brother was willing to enter into a Treaty with my Lord upon thoſe Terms. This to the beſt of my Remembrance is the whole I know of the Matter.

Mr. *Serj. Probyn.* I only would beg leave to ask this Queſtion, When the firſt Propoſal was made to Mr. *Ellis*, whether he did propoſe a certain Sum?

Mr. *E. Lucas.* I don't remember I did; but I think I told Mr. *Ellis* my Brother had formerly offered 6000 *l.* and I told Mr. *Ellis* this, and did lay before him all the Circumſtances of that Affair, to make him the more inclinable to engage in it.

Mr. *Com. Serjeant.* I deſire he may be asked, whether any Terms beſides were mentioned than what Mr. *Lucas* has mentioned before?

Mr. *E. Lucas.* I don't remember there were any other Directions then given, I can't be poſitive, but that he was willing to leave it to my Lord's Honour and Generoſity. And my Lords I can ſwear poſitively, that till the firſt Day of theſe Proceedings, when I met Mr. *Ellis* in the Court of Requeſts, I never knew that he had offered my Lord *Macclesfield* 6000 *l.*

Earl of *Macclesfield.* My Lords, we beg leave that Mr. *Ellis* may give an Account of what Propoſal he made to me from Mr. *Lucas.*

Mr. *Ellis.* My Lords, the Account Mr. *Lucas* has given Your Lordſhips is true in all the Particulars, as far as I can remember at this Diſtance of Time, though there are a good many that I could not have recollected of myſelf, only as to this one, his not impower-

ing me to offer this 6000 *l.* I ſhould not have gone to my Lord, unleſs I had had ſome particular Offer to mention. I particularly remember I made him that Offer, and I am as certain, that Mr. *Lucas* did ſpeak to me to make the Offer of 6000 *l.* for this Reaſon, that I never knew that Mr. *Lucas* had offered 6000 *l.* before by Mr. *Cottingham*, till this Impeachment begun, when Mr. *Lucas* being here, acquainted me that he had made that Offer to my Lord.

Mr. *E. Lucas.* I deſire Mr. *Ellis* may be asked, whether ever he told me, that he offered Lord *Macclesfield* 6000 *l.*?

Mr. *Ellis.* I believe I only did tell him in general, that I had made his Lordſhip the Offer which he had deſired me to make, and in general likewiſe, that my Lord was well ſatisfied with it.

Mr. *Com. Serjeant.* I deſire he may inform Your Lordſhips, whether, when he told Mr. *Lucas*, that he had made that Offer which he had deſired him, he did enquire what that Offer was?

Mr. *Ellis.* No, my Lords, he did not.

Mr. *Serj. Pengelly.* My Lords, they have called Mr. *Ellis* to confront Mr. *Lucas*; but they agree together in all the material Circumſtances. Mr. *Ellis* ſays, what Mr. *Lucas* ſwears is true in every Particular, unleſs in Relation to the Offer of 6000 *l.* In all the reſt Mr. *Ellis* confirms Mr. *Lucas*'s Evidence.

Mr. *E. Lucas.* I don't poſitively ſwear that I did not give him that Commiſſion, but to the beſt of my Remembrance, I did not give him that Commiſſion.

Earl of *Macclesfield.* I deſire Mr. *Ellis* may be asked, when he made the Propoſal to me, whether he mentioned any Condition whatſoever?

Mr. *Ellis.* No, my Lords, I did not mention any Condition.

Mr. *E. Lucas.* Till after the firſt Converſation with Mr. *Ellis*, I had no Direction from my Brother to mention any Price or Condition; I gave an Account to Your Lordſhips of two different Converſations.

Earl of *Macclesfield.* When the Anſwer was brought, that I was ſatisfied with the Propoſal, what did he do farther upon it?

Mr. *E. Lucas.* My Lords, Mr. *Ellis* did not tell me, that my Lord *Macclesfield* was ſatisfied with the Propoſal, but that my Lord *Macclesfield* had no Objection to my Brother, and he had formerly received a Recommendation of him; but at preſent another Perſon was recommended by ſome of the Maſters, whom he expected to be farther recommended.

Mr. *Plummer.* My Lords, I deſire Mr. *Ellis* may be asked, how long, before Mr. *Thurſton* was admitted, was the Converſation about giving Security, that Mr. *Lucas* might be indemnified from the Deficiencies?

Mr. *Ellis.* My Lords, in one of the laſt Converſations, which was after I had ſpoken to my Lord *Macclesfield*, Mr. *Lucas* might ſay ſomething about having Security. But I don't recollect it with any Certainty; if he did, it was ſome Days before Mr. *Thurſton* was admitted.

Mr. *Serj. Probyn.* I deſire he may inform Your Lordſhips, Whether he ever told my Lord *Macclesfield* any thing of this Diſcourſe about Security?

Mr. *Ellis.* No.

Sir *Geo. Oxenden.* He ſays, He never told my Lord *Macclesfield* of that Converſation: I deſire to know, if he told my Lord *Parker*?

Mr. *Ellis.* No, my Lords, I told no body at all.

Mr. *Strange.* My Lords, I beg Leave to make one Obſervation; a Learned Manager was pleaſed to obſerve upon the Appearance of theſe Two Witneſſes together, That now the Evidence of Mr. *Lucas* is confirmed by Mr. *Ellis*: Your Lordſhips are pleaſed to remember, that Mr. *Ellis* was our Witneſs, and was firſt examined; and therefore I ſhould apprehend the Obſervation may be turned much properer the other way: That the Evidenee of Mr. *Ellis*, who was our Witneſs, and was firſt examined, is now confirmed by Mr. *Lucas*.

Earl of *Macclesfield.* My Lords, I deſire he may inform Your Lordſhips with relation to the Diſcourſe that paſſed betwixt them about the Deficiencies; Whether the Objection did not relate ſingly to them?

Mr. *Ellis.* I don't well remember what paſſed upon the Subject of the Deficiencies; what I have ſaid to Your Lordſhips before, I remember full well, becauſe a particular Circumſtance made me recollect, that Mr. *Lucas* did ſay, he had heard there was no Deficiency in Mr. *Borret*'s Office; which I had heard too; but at what time that Diſcourſe was, I can't recollect; it might be as he repreſented it.

Earl of *Macclesfield.* Mr. *Lucas* ſaid to you, That he was willing to treat upon thoſe Terms?

Mr. *Edw. Lucas.* Upon thoſe Terms, or to that Effect, I did ſay.

Mr. *Plummer.* I only would make this Obſervation; Both theſe Evidences confirm this, that Mr. *Lucas* was an Inquiſitive Man, and would not part with his 6000 *l.* ſo eaſily as to ask no Queſtions.

Mr. *Serj. Pengelly.* We beg Leave now to call a Witneſs as to the Second Letter or Order, ſuppoſed to be ſent in *November* 1721. to all the Maſters. Mr. *Cottingham* could not take upon himſelf to ſay, that it was delivered; he had kept a *Memorandum* of the firſt, but none of that, and he believed he might ſay, it was delivered; we deny any ſuch Letter was delivered, and beg Leave to ask as to that particular Point.

Mr. *John Bennet* called.

Mr. *Serj. Pengelly.* I deſire he may be asked, whether in *November* 1721. any Second Letter, or Order, of the Purport of the firſt Order, was ſent, or delivered, in Relation to the Maſters bringing in their Accompts?

Mr. *J. Bennet.* My Lords, I never ſaw any ſuch Letter.

Mr. *Serj. Pengelly.* Did you ever hear of it?

Mr. *J. Bennet.* I never heard of it before, till I heard Mr. *Cottingham* read it at the Bar.

Mr. *Serj. Pengelly.* Did you receive any Account from the other Maſters, that they had received any ſuch Letter?

Mr. *J. Bennet.* No, my Lords, never.

Mr. *Serj. Pengelly.* Do you recollect any Diſcourſe between my Lord *Macclesfield* and your Brother, relating to your Brother's Account?

Mr.

Mr. *J. Bennet.* I don't recollect the whole.

Mr. *Serj. Pengelly.* What do you recollect?

Mr. *J. Bennet.* My Lord hath declared to me, That he wondered Mr. *Kinaſton* and my Brother ſhould put ſuch an *Item* in their Accompts, which would make a Diſcovery, that the Maſters had bought their Places with the Money of the Court, which might be of miſchievous Conſequence; that whenever it was objected to him, he had always taken great Pains to deny it.

Mr. *Serj. Pengelly.* When was this? About what Time?

Mr. *J. Bennet.* About *Chriſtmas* laſt.

Mr. *Serj. Probyn.* We beg leave to take Notice of the Nature of this Evidence, that it is very improper now, being new Evidence; not to the ſame Purpoſe to ſupport what was given before, but new Matter, and therefore not proper.

Mr. *Lutwyche.* We apprehend it is very proper, becauſe Mr. *Thomas Bennet*'s was objected to, and this confirms his Evidence.

Mr. *Holford* called.

Mr. *Serj. Pengelly.* My Lords, we deſire he may be asked, whether this Letter, or Order, of *November* 1721. was ever communicated to him by Mr. *Cottingham?*

Mr. *Holford.* No, my Lords, I never heard of it till now lately.

Mr. *Com. Serjeant.* I deſire Mr. *Holford* would inform Your Lordſhips, whether there were not then ſeveral Maſters ſenior to him? and whether it is not uſual to leave thoſe Letters, or Orders, with the Senior Maſters?

Mr. *Holford.* I don't know that ſuch Order, or Letter, was left at that Time. Mr. *Hiccocks* and Mr. *Fellowes* were Seniors to me.

Mr. *Com. Serjeant.* I deſire he may be asked the other Part of the Queſtion, Whether it is not uſual to leave Orders, wherein the Maſters are generally concerned, with the Senior Maſters?

Mr. *Holford.* It is not; but the Uſage generally is to be left at the Publick Office. It might be left with the Senior Maſter, for ought I know.

Mr. *Lovibond* called.

Mr. *Serj. Pengelly.* Did you ever hear or know of this Letter or Order of *Nov.* 1721?

Mr. *Lovibond.* I never heard of any ſuch Letter or Order, till I heard it read at this Bar.

Mr. *Kinaſton* called.

Mr. *Serj. Pengelly.* Mr. *Kinaſton*, will you give my Lords an Account, whether you heard of this Letter or Order of *Nov.* 1721?

Mr. *Kinaſton.* I ſuppoſe you mean the Letter which Mr. *Cottingham* read.

Mr. *Serj. Pengelly.* The ſame.

Mr. *Kinaſton.* I never heard of it, till I heard it read at this Bar.

Mr. *Serj. Pengelly.* I hope this will explain Mr. *Cottingham*'s Want of Memory, when he ſaid that he could not remember it.

Mr. *Lightboun* called.

Mr. *Serj. Pengelly.* I deſire to ask you, whether you know any Thing of this Letter of *Nov.* 1721?

Mr. *Lightboun.* I never heard of it, till I heard it at Your Lordſhips Bar from Mr. *Cottingham.*

Mr. *Edwards* called.

Mr. *Serj. Pengelly.* I deſire he may be asked, whether he ever heard of this Letter of *Nov.* 1721?

Mr. *Edwards.* I never heard of ſuch a Letter, till I heard it mentioned at this Bar.

Mr. *Serj. Pengelly.* So that, my Lords, we apprehend this Letter, when written by Mr. *Cottingham*, was a Pocket-Letter to be made uſe of on any proper Occaſion. The Managers have done with their Evidence and the Witneſſes, they ſhall call no more. We humbly apprehend, that we have cleared up the Reaſon, why the Lord took 5000 *l.* rather than 6000 *l.* it was from Hopes of greater Gain in having 5000 *l.* abſolutely, without being liable to refund, than 6000 *l.* liable to ſuch a Contingency. Upon the Evidence we ſubmit the whole Matter to Your Lordſhips Determination.

Mr. *Serj. Probyn.* My Lords, we will be ſhort in our Reflections upon this new Evidence. We apprehend their Evidence proves, what was inſiſted upon by us, that there was Care taken in diſpoſing of theſe Offices, and that my Lord *Macclesfield* having perſonal Knowledge of one Gentleman did prefer him before another, whom he did not know, tho' he had leſs Money from him, than he could have had of the other. It is agreed by Mr. *Lucas* and his Brother, that there was a propoſal of 6000 *l.* made upon this Occaſion: Mr. *Ellis* tells you, Mr. *Lucas* gave him Orders to propoſe it to my Lord *Macclesfield* without any Terms whatſoever: He never mentioned any Terms, or intimated any Condition or Reſtriction to my Lord *Macclesfield.* Upon that his Lordſhip was pleaſed to direct a proper Enquiry to be made, what Security he was able to give for the Diſcharge of his Offices; here there was 6000 *l.* propoſed without any Terms by one whom he did not know; but he preferred another whom he did know to be well qualified, for 5000 *l.* This doth not ſhew any Neglect in the noble Earl; but all the Care and Caution that ever could be taken; and this ſhews that the Earl could not do this out of an immoderate Deſire of Gain, when 6000 *l.* was propoſed to be given; but he preferred another whom he knew to be well qualified for leſs Money; ſo that we apprehend this is an Evidence which is much in favour of the Earl. As to the other Matter, the Maſters not knowing of this Letter, your Lordſhips obſerve what Evidence, was given by Mr. *Cottingham.* This is a Tranſaction ſometime ago, he ſays that he writ this Letter by the noble Lord's Order, that he cannot now ſay to which of the Maſters he delivered it, or whether it was perſonally delivered by him, or by one of his Clerks. Your Lordſhips will obſerve, that there were two Maſters Senior to Mr. *Holford, viz.* Mr. *Hiccocks* and Mr. *Fellowes*; and it might probably be delivered to one of them; one of them is ſince dead, the other is yet living; but we were not aware of the Objection, and ſo have not him here. This doth not impeach Mr. *Cottingham*'s Credit or his Evidence, ſo far as it concerns the Earl.

Mr. *Com. Serj.* My Lords, I will not enter into a ſtrict Comparing of the Evidence, we apprehend that what Mr. *Ellis* ſwore ſtands confirmed in every thing by Mr. *Lucas*, and we have

Reaſon

Reaſon to thank the Gentlemen of the Houſe of Commons for this Evidence. There was one material Part of our Evidence, that the Earl had a thorough Intention of entring into the Regulation of thoſe Matters; but by Diſputes ariſing in relation to the Juriſdiction of the Maſter of the Rolls, he was hindred.

Now the Evidence of Mr. *Lucas* Corroborates our Proof on this Head, he ſaith that Mr. *Cottingham* told him, tho' Security had not been taken, yet at preſent the noble Lord had a Reformation in View, and Security would be expected; and therefore he enquired what Security he could give, there was not only an Enquiry into his preſent Circumſtances, but likewiſe an Intimation that Security would be expected. This ſhews the Earl's Intention; and if the Thirſt of Gain had ſwayed him, Mr. *Lucas* would never have had thoſe Bugbears to affright him from giving ſo much Money. Upon the whole it appears that no part of our Evidence is any way impeached by the new Evidence they have given.

Earl of *Macclesfield*. My Lords, I beg leave to ſay a very few Words upon what hath been newly offered, as to the Evidence to take off my having preferred 5000 Guineas with a Perſon I thought a better Man, to 6000 *l.* with another, whom I thought a good Man. I apprehend it is not taken off at all by any Thing that has yet been offered. Mr. *Lucas* owns that at the firſt Time there was an Expectation of Security, and he has given your Lordſhips an Account that he asked what Security was expected; and was anſwered I think to the Value of 10,000 *l.* and that what he ſpoke of the Deficiency, was only that he ſhould not be liable to farther Orders to be made upon him for Contribution to the former Deficiencies of other Maſters; and in the latter Time, when the Clamour was greater, Mr. *Ellis* offered me 6000 *l.* abſolutely without any Condition, and I ſaid I approved of the Perſon and of the Offer, but I had another Gentleman then under Conſideration. Their Evidence indeed varies as to the Particulars of the Converſations they had upon this Subject: But whatever Diſcourſe paſſed between them, unleſs it came to my Knowledge, it ought not to affect me. I never head, nor is it ſo much as pretended, that I ever did hear, there were any manner of Terms or Conditions whatſoever annexed to the Propoſal made by Mr. *Lucas*.

Mr. *Ellis* has been asked this Queſtion, and has ſworn poſitively he mentioned none at all to me; ſo that there is not the leaſt Pretence that the Reſtriction, ſuppoſing Mr. *Lucas* annexed any to the Propoſal (which I muſt obſerve is flatly contradicted by Mr. *Ellis*'s Evidence) ever came to my Knowledge.

As to what Evidence is given in relation to the Letter of *November* 1721. your Lordſhips will remember, that when I ſpoke of that, I entred upon it as a Thing not at all neceſſary for me; becauſe they had not proved the Article, that the Letter writ in *February* was with an Intention to terrify the Maſters into a Contribution; but all the Proof they produced was, that the Maſters had paid a voluntary Contribution, and upon that they made ſome Obſervation; but not one of the Maſters ever gave your Lordſhips an Account that they did it by Reaſon of, or under the Terror of this Letter, they have called every one of them, and not one hath ſaid ſo, but agreed that they had paid it as a voluntary Contribution; ſo that there is no manner of Occaſion for what hath been ſaid about this Letter. Mr. *Cottingham* did ſay before your Lordſhips, that he thought the Letter was ſent, and he had no Reaſon to believe the contrary; but indeed he had no Memorandum of its being ſent. It is very extraordinary to ſuggeſt, that this ſhould be a pocket Letter. Can any Perſon imagine that that Letter was calculated for an Occaſion like this? Was there any Apprehenſion of this Proſecution in 1721? My Lords, it is not worth while to trouble your Lordſhips with any more Remarks about ſo groundleſs a Pretence. In the Reply there hath been ſomething new offered to your Lordſhips to make out my receiving Money from the Maſters to be an Offence at common Law; and there have likewiſe been mentioned ſeveral Acts of Parliament, to neither of which I have had any Opportunity of giving an Anſwer before; I therefore apprehend I have a Right to take Notice of them now. And firſt I beg Leave to obſerve to your Lordſhips, that every one of theſe Acts of Parliament relate plainly to Judges who take Bribes, or take Money for doing their Duty, or for doing thoſe Things they were bound to do; they lie upon your Lordſhips Table, and if your Lordſhips will but look upon them you will find all to be ſo.

That of *Magna Charta* is plainly ſo, that Juſtice ſhall be adminiſtred to the Party, without paying for it.

So the Statute of 12. *R.* II. that they ſhall. —

Mr. *Serj. Pengelly*. My Lord can not be regular to reply to us on that Statute.

Earl of *Macclesfield*. The Statute is, that they ſhall not make any Officer for Brokage.

Sir G. *Oxenden*. We muſt ſubmit it to your Lordſhips whether this can be regular; the noble Earl hath had his Defence, we have replyed; it is not regular for him to enter into a Debate now.

The Statute is upon your Lordſhips Table; and your Lordſhips will conſider it.

Earl of *Macclesfield*. I will not take up your Lordſhips Time any farther in inſiſting upon it; but I hope at leaſt thoſe Gentlemen will not oppoſe my taking Notice of one Thing that is new; though not any part of the Articles, which is what the Gentlemen have ſaid with relation to *Wilſon*'s Compoſition not being binding upon the Suitors of the Court; that it is matter of Horror that *Wilſon* ſhould truſt to the Faith of a Court of Juſtice, and upon that enter into a Compoſition, which at laſt ſhould not be effectual and binding. To that give me Leave to anſwer, that if *Wilſon* had acted honeſtly, and given a fair Account of his Eſtate and Effects in this Caſe, and it appeared upon the whole, that he could not pay more than according to this Compoſition; and at the ſame time that it muſt be a real advantage to the Suitors to have received their Proportion of what he was able to pay, without the Expences of a Statute of Bankrupcy; in that Caſe he would have the Benefit of it: But in Caſe he could have paid more, and this appeared only to be a fraudulent or unfair Compoſition, it would be no ways concluſive upon the Suitors; and as he ought not to reap any

Benefit

Benefit, ſo neither would they ſuffer any Prejudice by it upon that Suppoſition.

Mr. Serj. *Pengelly*, The Managers are entitled to the Reply and Concluſion.

As to our Evidence newly given, it proves in the ſtrongeſt manner, that if there was a Reaſon for diſtinguiſhing between 5000 *l.* and 6000 *l.* it was becauſe the 6000 *l.* was attended with an Incumbrance; and if it be ſaid that the Earl had no Notice of it, it is prov'd that his Agent, or the Perſon whom he employ'd, had this Account deliver'd to him, and knew it; and we appeal to the Letter which is in their Hands. And therefore this is ſo far a Confirmation of the other part of the Charge of Neglect when Security was offered. Why was not the Perſon accepted? Why Mr. *Elde* preferr'd?

Mr. *Lucas*'s Directions to his Brother, and his Tranſactions are confirmed by Mr. *Ellis*, my Lord's own Chaplain; and the only Reaſon why the Bargain was not concluded, was, becauſe of the Privilege inſiſted upon by the Perſon to be indemnified from all Contributions and Charges.

E. of *Mac.* I beg your Pardon, if I trouble Your Lordſhips once more, in Relation to a Piece of new Evidence, which I did not before reflect upon; I am under a very great Diſadvantage from theſe Gentlemen, who are for tying me down to very great Hardſhips, ſo that if any thing ſlips my Memory, at what they call the proper Time, it muſt at this rate be loſt for ever. I would take Notice of one Thing, with relation to what Mr. *Thomas Bennet* ſaid of what I ſpoke, of denying that the Maſters paid for their Offices out of the Suitors Money; they are attemping to prove that I knew of their doing ſo, and they prove it by ſhewing, that I ſaid I had always denyed it. But, my Lords, is there any of the Maſters that came in in my Time, that ſays I knew any ſuch thing? No, my Lords, not one of all thoſe Maſters that came in in my Time, and appear to have tranſacted in this manner; there are only two, Mr. *Kinaſton*, and Mr. *Thomas Bennet*; but is there any of them, or any other, that pretend that I knew they did ſo? Here are two Perſons that paid for their Offices out of the Suitors Money; and becauſe I told one of them afterwards, admitting what he ſaid to be true, that I had heard it ſaid it was ſo, and deny'd it; Is it from thence to be concluded that I knew it was really ſo? My Lords, I beg leave to obſerve as to the Matter of the difference of the Prices; I gave Evidence of the difference of Prices in other Offices, and their Riſe from 50 *l.* to 500 *l.* in one Inſtance, and from 200 *l.* to 800 *l.* in another.

Mr. Serj. *Peng.* We are unwilling to interrupt the Lord; but now for him to go back again into the whole, is a greater Right than his Lordſhip is entitled to; therefore from the Duty we owe to your Lordſhips, we hope every Thing that is regular ſhall be obſerv'd.

E. of *Mac.* I ſubmit if your Lordſhips think I am irregular, in the Confuſion my Papers were in when I made my Defence from them. The Notes relating to this and ſome other Matters were overlook'd: But as to the Reply, I muſt beg leave to make one general Obſervation, That the Gentlemen have thought the Arguments uſed by me in that Defence, either ſuch as they could not anſwer, or ſuch as needed no Anſwer, ſince they have not attempted to anſwer any of them; and which of the two, I muſt leave to Your Lordſhips Determination.

Mr. *Onſlow*, My Lords, in the Courſe of our Reply, we made uſe of the Statute of *Henry* the 4th. We have it not Printed, but we have an atteſted Copy in Writing, and the Original Roll; if your Lordſhips pleaſe, this atteſted Copy may be brought up to your Lordſhips Table.

Mr. *Nicholas Paxton* Sworn.

Mr. *N. Paxton.* My Lords, I examined this Copy with the Deputy-keeper of the Rolls in the *Tower*, and it is a true Copy.

E. of *Mac.* Whether that Parliament Roll be in the Nature of a Journal or a Statute Roll, wherein the Act of Parliament is enter'd?

Mr. *Paxton*, My Lords, the Officer is here; he will give Your Lordſhips an Account.

Mr. *Lutwyche*, It is quoted by my Lord *Coke* to be of the ſame Nature as a Parliament Roll.

Mr. *Holmes* called.

Mr. Serj. *Peng.* Mr. *Holmes*, Where is this Roll kept?

Mr. *Holmes.* My Lords, I am Deputy-keeper of the Records.

Mr. Serj. *Peng.* Where?

Mr. *Holmes.* In the *Tower.*

Mr. Serj. *Peng.* What Roll is that?

Mr. *Holmes.* It is the Parliament Roll of the 11th of *Henry* the 4th.

E. of *Mac.* I deſire he may inform Your Lordſhips whether there be any difference or diſtinction between the Parliament Roll and the Statute Roll?

Mr. *Holmes*, There are a great many private Acts enter'd upon the Parliament Rolls; that are not in the Statute Rolls; what is in the Statute Roll was ſent down by Writ into the ſeveral Counties to be proclaim'd in the ſeveral County Courts.

Mr. Serj. *Peng.* Whether that is not the Original Roll?

Mr. *Holmes.* This is the Original Roll.

E. of *Mac.* I apprehend the Parliament Roll contains the Petitions, and the King's Anſwer.

Mr. *Holmes*, It doth.

E. of *Mac.* Before it comes to be publiſhed as a Law, is it not drawn up in Form, and enter'd upon the Statute Roll?

Mr. *Holmes.* The Petition is a piece of Parchment; after it hath paſſed King, Lords and Commons, then it is entred on this Roll.

Mr. *Onſlow*, Whether the King's Aſſent is not entred upon this Roll?

Mr. *Holmes.* There is *le Roy le Veut.*

Lord *Lechmere*, I deſire for Your Lordſhips Satisfaction, that he may read what is upon the Parchment Roll.

Mr. *Holmes*, Reads it, *&c.*

Parl. Rot. N°. 28. 11 *H.* 4.

Reſpectuatur per Dominum Principem & Concilium.

Item, *QUE nul' Chaunceller, Treſorer Gardein de Privie Seal, Counſeiller du Roy, Serementz a Counſeill du Roy ne nul' autre Officer Jugge ne Miniſtre du Roy parnant fees ou gages de Roy pur lour ditz Offices ou Services, preigne en nulle manere en temps avenir aſcun manere de doun ou brocage de nully pur lour ditz Offices & Services affaire ſur peyne de reſpondre a Roy de la treble de ceo que iſſi preignont, & de ſatisfyer la Partie & punys al volunte de Roy, & ſont diſchargez de ſon Office, ſervice & Counſeill pur toutz jours, & que cheſcun qi vorra pur ſuer en la dite Matier eit la ſuit ſibien*

ſbien pur le Roy come pur luy Meſmes & eit la tierce partie de ſome de qi le parties ſoit duement convict.

Le Roy le Voet.

E. of *Mac.* What is there in the Margin?

Mr. *Holmes*, *Reſpectuatur per Dominum Principem & Concilium.*

E. of *Mac.* That I may not be miſunderſtood in this Matter, and accuſed of going to quibble away an Act of Parliament; Your Lordſhips will give me leave to obſerve in the firſt Place, That ſuppoſing this to be an Act of Parliament, it relates to Caſes where Judgments are given, or where the Parties have a Right, and not any way to me or to my Caſe; and having premis'd this, Your Lordſhips will ſee how this Matter ſtands. Here are two Rolls, the one is in the Nature of a Journal, wherein an Entry is made of the ſeveral Proceedings, and there are in it great Numbers of Petitions to the King by the Commons; whereby they pray, That Acts may be made, and the King's Anſwers upon them: The Anſwer it may be is agreeing to ſome part of what they pray, or ſometimes to no part, but a Proviſion made quite different from what they pray. At that Time the Judges drew up the Acts afterwards in Form, and thence then thoſe Acts were entred upon the Statute Roll; and they were promulgated at that Time by Proclamation on Writs iſſued to the Sheriffs of the ſeveral Counties. Now this hath in the Margin of the Parliament Roll, *Reſpectuatur per Dominum Principem & Concilium.* When the Judges came afterwards to draw up the Statutes of this Parliament, in order to publiſh them, there being a *Reſpectuatur* ſet upon this in the Parliament Roll; they forbore to draw it up amongſt the reſt, and it is not entred upon the Statute Roll at all, nor ever printed in any Statute Book ſince, nor was it ever publiſh'd by the Sheriffs, nor conſequently ſent to the ſeveral Courts of Juſtice, nor ever taken Notice of by them as a Law; for the Reaſon of that Maxim, That the Courts of Juſtice are bound to take Notice, *ex officio*, of publick Laws, and not of private Laws, was becauſe the publick Laws were tranſmitted to them under the Great Seal. The Fact then in this Caſe doth appear to be, that when the Acts of this Parliament of 11 *Hen.* 4. came to be drawn up and promulgated, this having a *Reſpectuatur* enter'd upon it, was not entred upon the Statute Roll, and ſo not publiſhed; this is the Fact. However it doth not concern me, nor doth it relate to the preſent Caſe at all, as I obſerved to Your Lordſhips before: If I had made a Decree for Money; if I had refuſed a Writ or *Subpœna*, unleſs the Party had paid me Money, then I had been within the Statute, but not in this Caſe.

Mr. *Lutwyche*, We ſay this Statute doth concern him: But as to what he ſaith, that there is an Entry in the Margin, *Reſpectuatur per Dominum Principem*; this is taken Notice of in the 3d Inſtitutes, where my Lord *Coke* particularly affirms, that this is an Act of Parliament in force, and is upon the Parliament Roll, and takes notice of *Reſpectuatur*, &c. that it was in Fact done by the Prince, the Son of King *Henry the* 4th, but without Authority; and that notwithſtanding ſuch Reſpite, this Act of Parliament is in full force.

Mr. *Weſt*, Suppoſing it to be an Act of Parliament it extends to the Earl's Caſe; but whether it be an Act of Parliament or no, is a Queſtion that the Noble Earl now makes. I thought it had been the common Learning, that all the old Laws were Petitions from the Commons, and the King's Anſwer to them; and that they were entred upon the Parliament Roll; and that the Parliament Roll was only a Voucher to the Statute Roll. I could give many Inſtances where that Voucher was not purſued, and the Statute Roll drawn up different from the Parliament Roll; and that was the very Reaſon of altering the manner of paſſing Laws into the Method that is now uſed. This is my Lord Chief Juſtice *Hales*'s Account in one of the Modern Reports.

Mr. *Plummer*. The Earl Impeach'd hath principally inſiſted on two Things, the one is the taking a leſs Sum of Money for a Maſter's Place when Vacant, when he had a greater Sum offer'd him; and that therefore it follows that he hath not made corrupt Advantages in order to raiſe his own Fortune, and that he is Innocent. He hath called the Negotiator in this Affair to prove, that when he was offer'd 6000 *l.* he took 5000 *l.* The Commons have by their Witneſs explain'd it; and this Matter is now fully clear'd, and Your Lordſhips have the whole before you; and I will make no further Obſervation upon it.

The ſecond Thing that he lays great Weight upon is, that he called for the Accounts of the Maſters, notwithſtanding the 500 *l.* apiece was paid in. Upon examining the Witneſſes, it doth not appear that any of the now Maſters knew any thing of it. I leave it to Your Lordſhips Conſideration, whether, if the Earl of *Macclesfield* had been in earneſt, he would not have had a Return of that Order. It doth not appear there was ever any Account given in; therefore when theſe two Points are made plainer againſt him now than they were on our firſt making good the Charge, tho' he ſeems to ſay the Sting of the Impeachment is taken out, yet it is plain the Sting is not taken out of it, but it ſtill remains; and Your Lordſhips will give ſuch Judgment as is juſt and legal.

Then the Managers for the Houſe of Commons and the Council withdrew, and then the Houſe adjourned.

Tueſday, 25 May, 1725. *The 11th Day, the Lords being ſeated in their Houſe, and the Managers being come, and ſeated as before, the uſual Proclamation was made for Silence.*

L. Ch. Juſt. *King*, MY Lords, Your Lordſhips having heard the Evidence in this Caſe, have agreed upon a Queſtion, which is ſeverally to be put to Your Lordſhips in the uſual Order. The Queſtion is this, Is *Thomas* Earl of *Macclesfield* guilty of high Crimes and Miſdemeanors charged upon him by the Impeachment of the Houſe of Commons, or not Guilty, upon your Honour?

L. Ch. Juſt. *King*, *Robert* Lord *Walpole*, What ſays your Lordſhip? Is *Thomas* Earl of *Macclesfield* guilty of High Crimes and Miſdemeanors charg'd upon him by the Impeachment of the Houſe of Commons, or not Guilty?

Lord *Walpole*, Guilty upon my Honour.

The ſame Queſtion was ſeverally put to the reſt, whoſe Names and Votes are as follow.

Nicholas Lord *Lechmere*, Guilty upon my Honour.
Matthew Lord *Ducie*, Guilty upon my Honour.
Thomas Lord *Onſlow*, Guilty upon my Honour.

Allen

Allen Lord *Bathurſt*,	Guilty upon my Honour.
Thomas Lord *Foley*,	Guilty, *&c.*
Samuel Lord *Maſham*,	Guilty, *&c.*
Thomas Lord *Trevor*,	Guilty, *&c.*
Thomas Lord *Montjoy*,	Guilty, *&c.*
George Lord *Hay*,	Guilty, *&c.*
John Lord *Gower*,	Guilty, *&c.*
Henry Lord *Herbert*,	Guilty, *&c.*
John Lord *Aſhburnham*,	Guilty, *&c.*
James Lord *Waldegrave*,	Guilty, *&c.*
Charles Lord *Lynn*,	Guilty, *&c.*
Charles Lord *Cornwallis*,	Guilty, *&c.*
Charles Lord *Bruce*,	Guilty, *&c.*
William Lord *Brooke*,	Guilty, *&c.*
James Lord *Compton*,	Guilty, *&c.*
William Lord *Hunſdon*,	Guilty, *&c.*
Hugh Lord *Clinton*,	Guilty, *&c.*
John Lord *Delawar*,	Guilty, *&c.*
Algernon Lord *Percy*,	Guilty, *&c.*
William Lord *Abergaveny*,	Guilty, *&c.*
Stephen Lord Biſhop of *Exeter*,	Guilty, *&c.*
William Lord Biſhop of *Briſtol*,	Guilty, *&c.*
Edward Lord Biſhop of *Chicheſter*,	Guilty, *&c.*
Richard Lord Biſhop of St. *Davids*,	Guilty, *&c.*
John Lord Biſhop of *Norwich*,	Guilty, *&c.*
John Lord Biſhop of *Carliſle*,	Guilty, *&c.*
William Lord Biſhop of *Bangor*,	Guilty, *&c.*
Joſeph Lord Biſhop of *Gloceſter*,	Guilty, *&c.*
Thomas Lord Biſhop of *Ely*,	Guilty, *&c.*
White Lord Biſhop of *Peterborough*,	Guilty, *&c.*
Samuel Lord Biſhop of *Rocheſter*,	Guilty, *&c.*
John Lord Biſhop of *Oxford*,	Guilty, *&c.*
John Lord Biſhop of St. *Aſaph*,	Guilty, *&c.*
Richard Lord Biſhop of *Wincheſter*,	Guilty, *&c.*
William Lord Biſhop of *Durham*,	Guilty, *&c.*
Edmund Lord Biſhop of *London*,	Guilty, *&c.*
George Lord Viſcount *Torrington*,	Guilty, *&c.*
Simon Lord Viſcount *Harcourt*,	Guilty, *&c.*
Richard Lord Viſcount *Cobham*,	Guilty, *&c.*
Henry Lord Viſcount *Tadcaſter*,	Guilty, *&c.*
Henry Lord Viſcount *Lonſdale*,	Guilty, *&c.*
William Lord Viſcount *Hatton*,	Guilty, *&c.*
Charles Lord Viſcount *Townſhend*,	Guilty, *&c.*
Lawrence Lord Viſcount *Say and Seal*,	Guilty, *&c.*
Thomas Earl of *Pomfret*,	Guilty, *&c.*
Bennet Earl of *Harborough*,	Guilty, *&c.*
William Earl of *Cadogan*,	Guilty, *&c.*
Talbot Earl of *Suſſex*,	Guilty, *&c.*
George Earl of *Halifax*,	Guilty, *&c.*
John Earl of *Briſtol*,	Guilty, *&c.*
Thomas Earl of *Strafford*,	Guilty, *&c.*
Waſhington Earl of *Ferrers*,	Guilty, *&c.*
Archibald Earl of *Ilay*,	Guilty, *&c.*
Henry Earl of *Deloraine*,	Guilty, *&c.*
John Earl of *Stair*,	Guilty, *&c.*
George Earl of *Orkney*,	Guilty, *&c.*
Charles Earl of *Selkirk*,	Guilty, *&c.*
James Earl of *Findlater*,	Guilty, *&c.*
David Earl of *Buchan*,	Guilty, *&c.*
John Earl of *Rothes*,	Guilty, *&c.*
George Earl of *Cholmondeley*,	Guilty, *&c.*
William Earl of *Albemarle*,	Guilty, *&c.*
Frederick Earl of *Rochford*,	Guilty, *&c.*
Richard Earl of *Scarbrough*,	Guilty, *&c.*
Montague Earl of *Abingdon*,	Guilty, *&c.*
William Earl of *Yarmouth*,	Guilty, *&c.*
Richard Earl of *Burlington*,	Guilty, *&c.*
Charles Earl of *Carliſle*,	Guilty, *&c.*
Nicholas Earl of *Scarſdale*,	Guilty, *&c.*
Robert Earl of *Sunderland*,	Guilty, *&c.*
William Earl of *Denbigh*,	Guilty, *&c.*
Edward Earl of *Warwick*,	Guilty, *&c.*
George Earl of *Northampton*,	Guilty, *&c.*
John Earl of *Leiceſter*,	Guilty, *&c.*
Henry Earl of *Lincoln*,	Guilty, *&c.*
Thomas Earl of *Pembroke*,	Guilty, *&c.*
John Marquiſs of *Tweedale*,	Guilty, *&c.*
James Duke of *Chandos*,	Guilty, *&c.*
Willian Duke of *Mancheſter*,	Guilty, *&c.*
Philip Duke of *Wharton*,	Guilty, *&c.*
Thomas Duke of *Newcaſtle*,	Guilty, *&c.*
Peregrine D. of *Ancaſter*, L. Great Chamb.	Guilty, *&c.*
John Duke of *Roxburghe*,	Guilty, *&c.*
James Duke of *Montroſs*,	Guilty, *&c.*
John Duke of *Montague*,	Guilty, *&c.*
Charles D. of *Grafton*, Lord Chamberlain,	Guilty, *&c.*
John D. of *Greenwich*, Lord Steward,	Guilty, *&c.*
William D. of *Devonſhire*, Lord Preſident,	Guilty, *&c.*
William Lord Arch-Biſhop of *Canterbury*,	Guilty, *&c.*

L. Ch. Juſt. *King*, My Lords, Your Lordſhips have unanimouſly found *Thomas* Earl of *Macclesfield* guilty of High Crimes and Miſdemeanors charged upon him by the Impeachment of the Houſe of Commons.

Then the Managers for the Houſe of Commons and the Council withdrew; and then the Houſe adjourned.

Wedneſday, 26 May, 1725. *The 12th Day.*

The Lords being ſat, and the Managers being come, the uſual Proclamation was made for Silence.

THEN the Gentleman Uſher was commanded to call in the Earl of *Macclesfield*, who being come to the Bar, the Speaker acquainted him, that the Lords had fully conſidered of his Caſe, and had unanimouſly found him Guilty of High Crimes and Miſdemeanors charged upon him by the Impeachment of the Houſe of Commons.

E. of *Mac.* I attend Your Lordſhips in Obedience to Your Lordſhips Command; but I am perſuaded, that if Your Lordſhips knew what I ſuffer, Your Lordſhips would not have required this of me, the rather as I did not intend to make any Exceptions in relation to the Proceedings, or give Your Lordſhips any further Trouble. I am now to expect Your Lordſhips Judgment; and I hope that you will be pleas'd to conſider, that I have ſuffered no ſmall matter already in the Tryal, in the Expence I have been at, the Fatigue, and what I have ſuffered other ways; beſides the cruel Diſtemper which this hath brought upon me. I have paid back 10,800 *l.* of the Money already, I have loſt my Office, I have undergone the Cenſure of both Houſes of Parliament, which is in it ſelf a very ſevere Puniſhment. My Lords, the Deficiency of Mr. *Dormer* doth ſound large, 25,000 *l.* but my Lords, it was not through my Fault that the Deficiency happened, nor was that Maſter put in by me; on the contrary, with great Difficulty, it is reduced by my means to 10,000 *l.* leſs than otherwiſe it would have been. My Lords, all the Loſs that can be ſuſtain'd by any thing charged againſt me, is only what ſome of the Suitors might have had more for their Proportion, than they can do now out of Mr. *Dormer*'s Effects; his Debt came to about 47,000 *l.* his Effects to about 13,000 *l.* which is about a fourth Part: I don's find there

is one Suitor hath made his Complaint, that he hath not received his five Shillings in the Pound. Mrs. *Chitty* hath received her Share.

Mr. *Onſlow*, My Lords, We muſt ſubmit it to Your Lordſhips. This was proper when the Noble Lord was making his Defence; but it is not ſo in Arreſt of Judgment. Your Lordſhips have found him Guilty of the Fact, and he is now arguing in Defence of it: If he hath any thing in Arreſt of Judgment, he may ſay it, and the Commons are here ready to anſwer it.

I was very unwilling, my Lords, to interrupt the Earl, and do it now with great Reluctancy, but it is for the ſake of Regularity in Your Lordſhips Proceedings; and we muſt appeal to Your Lordſhips whether the Noble Lord is not now going into the Repetition of what he ſaid in his Defence?

E. of *Mac.* My Lords, I ſubmit whether this be not proper in mitigation of Your Lordſhips Sentence; but whether it be or be not, I leave my ſelf to Your Lordſhips Juſtice and Mercy; I am ſure neither of them will be wanting, and I entirely ſubmit. I dont't know whether Your Lordſhips will be pleaſed to diſmiſs my Attendance at this Time, or whether Your Lordſhips will require me to come again under this very great Uneaſineſs; I ſubmit it to Your Lordſhips.

Then the ſaid Earl, as alſo the Managers, were directed to withdraw; and the Houſe ordered *Thomas* Earl of *Macclesfield* to be committed to the Cuſtody of the Gentleman Uſher of the *Black Rod*; and then proceeded to the Conſideration of what Judgment to give upon the Impeachment againſt the ſaid Earl, and afterwards adjourned to *Thurſday* Eleven of the Clock, the 27th of *May*.

Thurſday, 27 May, 1725. *The 13th Day.*

A Meſſage was ſent to the Houſe of Commons by Mr. Baron *Page*, and Mr. Juſtice *Denton*, to acquaint them, That the Lords are ready to give Judgment againſt *Thomas* Earl of *Macclesfield*, if they with their Speaker will come and demand the ſame.

A Meſſage was brought from the Houſe of Commons, by Sir *William Gage* and others, to acquaint the Houſe of Lords, That the Commons, with their Speaker, do intend immediately to come to demand Judgment againſt *Thomas* Earl of *Macclesfield*; and do deſire that the Painted Chamber, and other Paſſages to the Lord's Houſe, may be cleared forthwith.

The Meſſengers were called in, and told, That the Lords had given Order as deſired,

Which was done accordingly.

Then the Commons, with their Speaker, being preſent at the Bar of the Houſe, the Lord Chief Juſtice *King*, Speaker of the Houſe of Lords, directed the Gentleman Uſher of the *Black Rod*, to bring *Thomas* Earl of *Macclesfield* to the Bar; who, after low Obeiſances made, kneeled until the ſaid Lord Chief Juſtice acquainted him he might riſe.

Then the Speaker of the Houſe of Commons ſaid as follows,

My Lords,

'THE Knights, Citizens, and Burgeſſes in Parliament aſſembled, in the Name of themſelves, and of all the Commons of *Great Britain*, did at this Bar impeach *Thomas* Earl of *Macclesfield* of High Crimes and Miſdemeanors; and did exhibit Articles of Impeachment againſt him; and have made good their Charge.

'I do therefore, in the Name of the Knights, Citizens, and Burgeſſes in Parliament aſſembled, and of all the Commons of *Great Britain*, demand Judgment of Your Lordſhips againſt *Thomas* Earl of *Macclesfield*, for the ſaid High Crimes and Miſdemeanors.

Then the Lord Chief Juſtice *King*, Speaker of the Houſe of Lords, ſaid,

'Mr. Speaker, The Lords are now ready to proceed to Judgment in the Caſe by you mentioned.

'*Thomas* Earl of *Macclesfield*, The Lords have unanimouſly found you Guilty of High Crimes and Miſdemeanors, charged on you by the Impeachment of the Houſe of Commons, and do now according to Law proceed to Judgment againſt you, which I am ordered to pronounce.

'Their Lordſhips Judgment is, and this High Court doth adjudge,

That you, Thomas *Earl of* Macclesfield, *be fined in the Sum of Thirty Thouſand Pounds unto our Sovereign Lord the King; and that you ſhall be Impriſoned in the* Tower *of* London, *and there kept in ſafe Cuſtody, until you ſhall pay the ſaid Fine.*

Then the Speaker with the Commons withdrew, and the Earl of *Macclesfield* was taken from the Bar.

Ordered, *That the Speaker of this Houſe do give Order for the Printing and Publiſhing the Tryal of* Thomas *Earl of* Macclesfield; *and that no other Perſon but ſuch as he ſhall appoint, do preſume to Print the ſame.*

Ordered, *That the ſaid Earl of* Macclesfield *be committed to the* Tower *of* London, *there to be kept in ſafe Cuſtody until he ſhall pay the abovementioned Fine of Thirty Thouſand Pounds to the King; and that the Gentleman Uſher of the* Black Rod, *in whoſe Cuſtody the ſaid Earl at preſent is, do him ſafely convey to the ſaid* Tower, *and deliver him to the Conſtable thereof, or in his Abſence to the Lieutenant, or Deputy Lieutenant of the ſame; and that the ſaid Conſtable, Lieutenant, or Deputy Lieutenant do receive the Body of the ſaid Earl, and him keep in ſafe Cuſtody there, until he ſhall have paid the ſaid Fine.*

Then the Houſe adjourned to *Monday* 31 *May*, 1725.

MVSEVM BRITAN NICVM

The END.